

Title 23

Zoning

Title 23 TABLE OF CONTENTS

SUB-TITLE 23A	ORDINANCE APPLICABILITY	23
23A.04	TITLE, ADOPTION AND PURPOSES	25
23A.04.010	Title of Ordinance	25
23A.04.020	Adoption of Ordinance; Repeal of Prior Zoning Ordinance	25
23A.04.030	Purpose of Ordinance and Relationship to Plans	25
23A.08	INTERPRETATION AND CONSTRUCTION OF ORDINANCE	27
23A.08.010	Use of Language	27
23A.08.020	Use of Acronyms	28
23A.08.030	Use of Numbers.....	28
23A.08.040	Rounding of Quantities	28
23A.08.050	General Rules of Format	28
23A.12	GENERAL REGULATIONS	29
23A.12.010	Uses and Buildings Must Comply with Ordinance	29
23A.12.020	Lot Changes Shall Comply with Ordinance	29
23A.12.030	Yards, Open Space and Lot Coverage Shall Comply with Ordinance	29
23A.12.040	Buildings Shall Not Cross Property Lines	29
23A.12.050	Phases within One Year Time Period Count as One Project for Threshold Regulations.....	30
23A.16	ZONING MAPS, DISTRICTS AND BOUNDARIES.....	31
23A.16.010	Official Zoning Map.....	31
23A.16.020	Property Classified in Districts	31
23A.16.030	District Boundaries	32
23A.20	ZONING ORDINANCE AMENDMENTS	33
23A.20.010	Amendments	33
23A.20.020	Initiation	33
23A.20.030	Consideration by Planning Commission.....	33
23A.20.040	Planning Commission Action Forwarded to City Council.....	34
23A.20.050	Effect of Planning Commission Action	34
23A.20.060	Consideration By City Council	35
23A.20.070	Effect of Council Approval	35
23A.20.080	Resubmittal of Petition for Reclassification	35
23A.24	APPLICABILITY, EMERGENCIES, INTERPRETATION, SEVERABILITY, RULES OF EVIDENCE AND PROCEDURE.....	36
23A.24.010	Applicability.....	36
23A.24.020	Emergencies.....	36
23A.24.030	Interpretation and Effect	36
23A.24.040	Rules of Evidence and Procedure	37

Title 23 TABLE OF CONTENTS

SUB-TITLE 23B	ORDINANCE ADMINISTRATION.....	39
23B.04	ZONING ADJUSTMENTS BOARD	41
23B.04.010	Zoning Adjustments Board Membership	41
23B.04.020	Responsibilities and Powers of the Board.....	41
23B.08	DESIGN REVIEW COMMITTEE	42
23B.08.010	Design Review Committee	42
23B.08.020	Responsibilities and Powers of the Design Review Committee	42
23B.12	ZONING OFFICER.....	43
23B.12.010	Zoning Officer.....	43
23B.12.020	Responsibilities and Powers of the Zoning Officer	43
23B.12.030	Secretary to the Zoning Adjustments Board.....	43
23B.12.040	Secretary to the Design Review Committee.....	43
23B.16	USE OF CONFLICT RESOLUTION OR MEDIATION SERVICE	44
23B.16.010	Conflict Resolution and Mediation.....	44
23B.16.020	Rules and Expectations of the Conflict Resolution/Mediation Process	44
23B.20	ZONING CONFORMANCE REVIEW.....	46
23B.20.010	General Regulations.....	46
23B.20.020	Zoning Conformance Review	46
23B.20.030	Determination Limited to Application	46
23B.20.040	Zoning Certificates	46
23B.20.045	Zoning Certificates for Temporary Outdoor Uses	46
23B.20.050	Application and Fee.....	46
23B.20.060	Issuance of Zoning Certificates	47
23B.24	APPLICATIONS FOR PERMITS	48
23B.24.010	General Requirements	48
23B.24.020	Persons Who May File an Application.....	48
23B.24.030	Application Forms and Supporting Materials--Additional Information for Certain Projects.....	48
23B.24.040	Payment, Waiver and Refund of Application Fees	49
23B.24.050	Determination of Completeness of Applications.....	49
23B.24.060	Registry of Organizations to Receive Notice.....	49
23B.24.070	Summary Denial of Certain Applications	50
23B.28	ADMINISTRATIVE USE PERMITS.....	51
23B.28.010	Use Permits Issued by the Zoning Officer.....	51
23B.28.020	AUPs for Public and City Franchise Uses	51
23B.28.030	Referral of Applications for AUPs to Board.....	51

Title 23 TABLE OF CONTENTS

23B.28.040	Public Notice Requirements for AUPs	51
23B.28.050	Findings for Issuance and Denial and Conditions	52
23B.28.060	Appeals of Decision of Zoning Officer to Board.....	52
23B.32	USE PERMITS	53
23B.32.010	Use Permits Issued by the Zoning Adjustments Board	53
23B.32.020	Public Notice Requirements	53
23B.32.030	Public Hearing and Action	54
23B.32.040	Findings for Issuance and Denial and Conditions	54
23B.32.050	Notice of Decision and Appeal.....	54
23B.32.060	Public Hearing	55
23B.32.070	Board Action on Remand.....	56
23B.32.080	Certification of Use Permits by City Council	56
23B.32.090	Repealed by Ord. 7350-NS	56
23B.34	GREEN PATHWAY	57
23B.34.010	Applicability.....	57
23B.34.020	Purpose	57
23B.34.030	Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources ..	57
23B.34.040	Voluntary Green Pathway Election--Application	58
23B.34.050	Requirements Applicable to All Green Pathway Projects	59
23B.34.060	Additional Green Pathway Requirements Applicable to Large Buildings and Hotels.....	60
23B.34.070	Development Standards for All Green Pathway Projects	60
23B.34.080	Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height.....	61
23B.34.090	Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height.....	62
23B.34.100	Tolling	62
23B.34.110	Compliance.....	62
23B.34.120	City Manager Authority to Issue Regulations.....	62
23B.36	MASTER USE PERMITS	63
23B.36.010	Applicability of Master Use Permit Process.....	63
23B.36.020	Purposes of Master Use Permits.....	63
23B.36.030	Authorizations under the Master Use Permit Process	63
23B.36.040	Notice of Application	64
23B.36.050	Findings	64
23B.40	AUPS FOR TEMPORARY USES.....	65
23B.40.010	Temporary Uses	65
23B.40.020	Notice Requirements	65
23B.40.030	Issuance, Findings and Conditions.....	65

Title 23 TABLE OF CONTENTS

23B.40.040 Appeals of Zoning Officer Decisions 65

23B.44 VARIANCES..... 66

23B.44.010 Variances..... 66

23B.44.020 Application and Hearing Process 66

23B.44.030 Findings for Issuance and Denial 66

23B.44.040 Notice of Decision, Appeal, Certification by Council..... 67

23B.44.050 Exception where Applicant Establishes Inapplicability or
Unconstitutionality of General Requirements 67

23B.48 MODIFICATION OF DEVELOPMENT STANDARDS..... 68

23B.48.010 Applicability 68

23B.48.020 Purposes 68

23B.48.030 Authorizations to Modify Use Locations and/or Development
Standards 68

23B.48.040 Findings..... 69

23B.52 REASONABLE ACCOMMODATION..... 70

23B.52.010 Purpose 70

23B.52.020 Application..... 70

23B.52.030 Information Required..... 70

23B.52.040 Process 71

23B.52.050 Action on Application--Criteria--Findings--Appeal 71

23B.52.060 Recission of Grants of Reasonable Accommodation 72

23B.52.070 Fees 72

23B.56 CONDITIONS APPLICABLE TO ALL PERMITS 73

23B.56.010 Uses Approved Deemed to Exclude Other Uses 73

23B.56.020 Modification of Permits 73

23B.56.030 Plans and Representations Become Conditions 74

23B.56.040 Subject to All City and Other Regulations 74

23B.56.050 Required Guarantees 74

23B.56.060 Periodic Review and Reporting 74

23B.56.070 Limited Duration of Time 74

23B.56.080 Exercised Permit for Use Survives Vacancy of Property..... 74

23B.56.090 Resubmittal of Same Use Permit Application..... 74

23B.56.100 Exercise and Lapse of Permits..... 74

23B.60 COMPLIANCE AND REVOCATION..... 76

23B.60.010 Revocation and Modification of Permits 76

23B.60.020 Findings for Revocation/Modification of Permit..... 76

23B.60.030 Proceedings for Initiation of Revocation/Modification -- Hearing
Required for Recommendation to Revoke or Modify 76

23B.60.040 Recommendation 77

Title 23 TABLE OF CONTENTS

23B.60.050	Council Proceedings -- Notice of Decision	77
23B.60.060	Remedies	77
23B.60.070	Recovery of Costs -- Fees	77
23B.64	ABATEMENT OF NUISANCES	79
23B.64.010	Nuisances Prohibited.....	79
23B.64.020	Nuisances Defined	80
23B.64.030	Proceedings for Initiation of Abatement.....	80
23B.64.040	Recommendation	80
23B.64.050	Council Proceedings -- Notice of Decision	80
23B.64.060	Remedies	81
23B.64.070	Recovery of Costs -- Fees	81
23B.68	PRIVATE RIGHT OF ACTION.....	83
23B.68.010	Private Right of Action	83
SUB-TITLE 23C	GENERAL PROVISIONS APPLICABLE IN ALL DISTRICTS	85
23C.04	CONFORMING AND NON-CONFORMING USES, BUILDINGS AND LOTS.....	87
23C.04.010	Establishment of Conforming Uses, Buildings and Structures .	87
23C.04.020	Establishment of Lawful Non-conforming Uses, Buildings, Structures and Lots	87
23C.04.030	Abandonment of Lawful Non-Conforming Uses, Buildings and Structures	87
23C.04.040	Change of Lawful Non-conforming Use, Building or Structure to Conforming Use, Building or Structure	88
23C.04.050	Continuance of Non-conforming Buildings and Structures	88
23C.04.060	Changes of Non-conforming Uses	88
23C.04.070	Expansions of Non-conforming Buildings and Structures	89
23C.04.075	Exemptions for Public Safety Structural Alterations to Conforming and Non-conforming Buildings	89
23C.04.076	Exemptions for Existing Public Libraries	90
23C.04.080	Conversions of Non-conforming Buildings and Structures	90
23C.04.090	Destruction and Re-construction of Non-conforming Buildings	91
23C.04.100	Rebuilding after Involuntary Destruction of Structure or Portion Thereof	91
23C.06	BED AND BREAKFAST ESTABLISHMENTS IN RESIDENTIAL DISTRICTS.....	92
23C.06.010	Purpose	92
23C.06.020	Continued Operation -- Eligibility and Application.....	92
23C.06.030	Regulation of B&Bs	93
23C.06.040	Determinations by City Manager	93

Title 23 TABLE OF CONTENTS

23C.06.050	Status of B&B Uses Under This Chapter	93
23C.06.060	Future Regulations Applicable.....	93
23C.06.070	Automatic Repeal.....	94
23C.08	DEMOLITION AND DWELLING UNIT CONTROLS	95
23C.08.010	Demolition or Elimination of Dwelling Units--General Requirement.....	95
23C.08.020	Elimination of Dwelling Units through Demolition.....	95
23C.08.030	Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use	97
23C.08.035	Private Right of Action	98
23C.08.040	Elimination of Residential Hotel Rooms	98
23C.08.050	Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses	99
23C.08.060	Building Relocations.....	99
23C.08.070	Limitations	99
23C.10	EMERGENCY SHELTER ZONING	101
23C.10.010	Applicability	101
23C.10.020	Purpose	101
23C.10.030	Permit Requirement	101
23C.10.040	Standards for Emergency Shelters Located in Commercial Districts.....	101
23C.10.050	Seasonal Emergency Shelters Located in Residential Districts.....	103
23C.10.060	Maximum Bed Count Per Shelter by Zoning District.....	103
23C.10.070	Findings.....	103
23C.12	INCLUSIONARY HOUSING REQUIREMENTS.....	104
23C.12.010	Purpose	104
23C.12.020	Applicability of Regulations	104
23C.12.030	General Inclusionary Requirement: 20% of Units	105
23C.12.035	Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project.....	105
23C.12.040	Requirements Applicable to all Inclusionary Units.....	106
23C.12.050	Repealed by Ord. 7644-NS.....	107
23C.12.060	Inclusionary Unit Requirements for Rental Housing Projects	107
23C.12.070	Inclusionary Unit Requirements for Ownership Projects.....	107
23C.12.080	Special Requirements for Avenues Plan Area.....	109
23C.12.090	Administrative Regulations.....	112
23C.12.100	Fees	113

Title 23 TABLE OF CONTENTS

23C.14	Density Bonus.....	114
23C.14.010	Purpose	114
23C.14.020	Definitions.....	114
23C.14.030	Application Requirements.....	115
23C.14.040	Density Bonus Calculations and Procedures	115
23C.14.050	Incentives and Concessions.....	115
23C.14.060	Waivers and Reductions.....	116
23C.14.070	Qualifying Units	116
23C.14.080	Special Provisions	116
23C.14.090	Regulatory Agreements	116
23C.16	Home Occupations	117
23C.16.010	General Requirements	117
23C.16.020	Permit Requirements (See 23F.04 for Home Occupation definitions.)	118
23C.16.030	Findings	118
23C.16.040	Complaints and Imposition of Conditions	118
23C.17	Wireless Telecommunication Facilities	119
23C.17.010	Applicability of Regulations.....	119
23C.17.020	Purpose	119
23C.17.030	General Requirements	120
23C.17.040	Minimum Application Requirements	120
23C.17.050	Locational Requirements.....	121
23C.17.060	Height Requirements.....	122
23C.17.070	Design Requirements	122
23C.17.080	Operation and Maintenance Standards.....	124
23C.17.085	Public Information Requirements	125
23C.17.090	Requirement for Certification of Facilities.....	125
23C.17.100	Findings Required for Approval	127
23C.17.110	Cessation of Operations	128
23C.18	Transportation Demand Management	128a
23C.18.010	Purpose	128a
23C.18.020	Applicability of Regulations.....	128a
23C.18.030	Transportation Demand Management Program Requirements	128a
23C.18.040	Monitoring, Reporting and Compliance	128b
23C.19	Off-Street Parking Maximums for Residential Development.....	128c
23C.19.010	Purpose	128c
23C.19.020	Applicability of Regulations.....	128c
23C.19.030	Off-street Parking Maximums	128c
23C.19.040	Excess Off-street Parking.....	128c

Title 23 TABLE OF CONTENTS

23C.20	Exemptions	129
23C.20.010	Exempted Accessory Uses.....	129
23C.20.020	Exempted Temporary Uses	130
23C.20.030	Exempted Temporary Structures.....	130
23C.22	Short-Term Rentals	131
23C.22.010	Purposes	131
23C.22.020	Applicability	131
23C.22.030	Definitions.....	131
23C.22.040	Permit Required	132
23C.22.050	Operating Standards and Requirements.....	133
23C.22.060	Remedies	134
23C.23	Percentage for Public Art on Private Projects	135
23C.23.010	Purpose	135
23C.23.020	Applicability	135
23C.23.030	Exceptions.....	135
23C.23.040	Definitions.....	136
23C.23.050	General Requirements	136
23C.23.060	Required Permits.....	136
23C.23.070	In-Lieu Fee	137
23C.23.080	Administrative Regulations (Guidelines)	137
23C.24	Accessory Dwelling Units	138
23C.24.010	Applicability of Regulations	138
23C.24.020	Purposes	138
23C.24.030	Permit Procedures.....	138
23C.24.040	Repealed by Ord. 7683-NS	138
23C.24.050	Repealed by Ord. 7683-NS	138
23C.24.060	Repealed by Ord. 7683-NS	139
23C.24.070	Repealed by Ord. 7683-NS	139
23C.25	Cannabis Uses	140
23C.25.010	Cannabis Retail	140
23C.25.020	Commercial Cannabis Cultivation	141
23C.25.030	Cannabis Manufacturing, Testing Labs and Distribution	142
23C.25.040	Microbusinesses.....	142
23C.26	Urban Agriculture	144
23C.26.010	Purposes	144
23C.26.020	Applicability	144
23C.26.030	Urban Agriculture Uses and Levels of Discretion	144

Title 23 TABLE OF CONTENTS

23C.26.040	Thresholds.....	144
23C.26.050	Operation Standards	145
23C.26.060	Complaints.....	145
SUB-TITLE 23D	PROVISIONS APPLICABLE IN ALL RESIDENTIAL DISTRICTS.....	147
23D.04	Lot and Development Standards.....	149
23D.04.010	Lot Requirements	149
23D.04.020	Height Limits for Main Buildings	149
23D.04.030	Yards and Building Separations for Main Buildings	150
23D.04.040	Lot Coverage	151
23D.04.050	Usable Open Space	152
23D.04.060	Screening Required for Garbage Cans and Utility Meters	152
23D.04.070	Pedestrian Walkway for Multiple Dwellings	152
23D.04.080	Special Building Feature Requirements for R-Lots	152
23D.08	Accessory Buildings and Structures.....	153
23D.08.005	Permitted Uses in Accessory Buildings and Structures.....	153
23D.08.010	Accessory Buildings & Structures May Exceed Limit with Use Permit	153
23D.08.020	Height Limits for Accessory Buildings or Structures	153
23D.08.030	Setback Requirements for Accessory Building or Structures ...	154
23D.08.040	Special Rebuilding/Replacement Provisions	154
23D.08.050	Maximum Building Length	154
23D.08.060	Fences and Other Accessory Structures	155
23D.10	Repealed by 7599-NS	156
23D.12	Off-Street Parking Requirements	157
23D.12.010	Purposes	157
23D.12.020	Applicability.....	157
23D.12.030	Off-site Parking.....	157
23D.12.040	Residential Off-street Parking Spaces Shall Conform to Traffic Engineering Requirements	158
23D.12.050	Number of Parking Spaces Required	158
23D.12.060	Joint Use of Off-street Parking Spaces	158
23D.12.065	Bicycle Parking	159
23D.12.070	Two or More Uses of a Building.....	159
23D.12.080	Site Location and Screening of Uncovered Parking Spaces and Driveways	159
23D.12.090	Parking Lot Standards	160

Title 23 TABLE OF CONTENTS

23D.16	R-1	SINGLE FAMILY RESIDENTIAL DISTRICT PROVISIONS	162
23D.16.010		Applicability of Regulations	162
23D.16.020		Purposes	162
23D.16.030		Uses Permitted.....	162
23D.16.040		Reserved	164
23D.16.050		Special Provisions: Addition of Bedrooms to Parcels.....	164
23D.16.060		Reserved	165
23D.16.070		Development Standards.....	165
23D.16.080		Parking -- Number of Spaces	166
23D.16.090		Findings.....	166
23D.20	R-1A	LIMITED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS	167
23D.20.010		Applicability of Regulations	167
23D.20.020		Purposes	167
23D.20.030		Uses Permitted.....	167
23D.20.040		Reserved	169
23D.20.050		Special Provisions: Addition of Bedrooms to Parcels.....	169
23D.20.060		Reserved	170
23D.20.070		Development Standards.....	170
23D.20.080		Parking -- Number of Spaces	170a
23D.20.090		Findings.....	170a
23D.24	ES-R	ENVIRONMENTAL SAFETY-RESIDENTIAL DISTRICT PROVISIONS	172
23D.24.010		Applicability of Regulations	172
23D.24.020		Purposes	172
23D.24.030		Uses Permitted.....	173
23D.24.040		Specific Plan Required	175
23D.24.050		Environmental Assessment Required	175
23D.24.060		Reserved	177
23D.24.070		Development Standards.....	177
23D.24.080		Parking -- Number of Spaces	178
23D.24.085		Projects in the Panoramic Hill Historic District	178
23D.24.090		Findings Required	178
23D.28	R-2	RESTRICTED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS	180
23D.28.010		Applicability of Regulations	180
23D.28.020		Purposes	180
23D.28.030		Uses Permitted.....	180
23D.28.040		Reserved	182
23D.28.050		Special Provisions: Addition of Bedrooms to Parcels.....	182
23D.28.060		Reserved	183

Title 23 TABLE OF CONTENTS

23D.28.070	Development Standards	183
23D.28.080	Parking -- Number of Spaces	184
23D.28.090	Findings	184
23D.32	R-2A RESTRICTED MULTIPLE-FAMILY RESIDENTIAL DISTRICT PROVISIONS	185
23D.32.010	Applicability of Regulations.....	185
23D.32.020	Purposes	185
23D.32.030	Uses Permitted	185
23D.32.040	Reserved	187
23D.32.050	Special Provisions: Addition of Bedrooms to Parcels	188
23D.32.060	Reserved	188
23D.32.070	Development Standards	188
23D.32.080	Parking -- Number of Spaces	189
23D.32.090	Findings	190
23D.36	R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT PROVISIONS	191
23D.36.010	Applicability of Regulations.....	191
23D.36.020	Purposes	191
23D.36.030	Uses Permitted	191
23D.36.040	Reserved	194
23D.36.050	Special Provisions: Design Review in Southside Plan Area	194
23D.36.060	Special Provisions: Addition of Bedrooms to Parcels	195
23D.36.070	Development Standards	196
23D.36.080	Parking -- Number of Spaces	197
23D.36.090	Findings	197
23D.40	R-4 MULTI-FAMILY RESIDENTIAL DISTRICT PROVISIONS	199
23D.40.010	Applicability of Regulations.....	199
23D.40.020	Purposes	199
23D.40.030	Uses Permitted	199
23D.40.040	Special Provisions -- Design Review	202
23D.40.050	Reserved	202
23D.40.060	Reserved	202
23D.40.070	Development Standards	202
23D.40.080	Parking -- Number of Spaces	203
23D.40.090	Findings	204
23D.44	R-5 HIGH DENSITY RESIDENTIAL DISTRICT PROVISIONS	206
23D.44.010	Applicability of Regulations.....	206
23D.44.020	Purposes	206
23D.44.030	Uses Permitted	206
23D.44.040	Reserved	209
23D.44.050	Reserved	209

Title 23 TABLE OF CONTENTS

23D.44.060	Reserved	209
23D.44.070	Development Standards.....	209
23D.44.080	Parking -- Number of Spaces	210
23D.44.090	Findings.....	211
23D.48	R-S RESIDENTIAL SOUTHSIDE DISTRICT PROVISIONS	212
23D.48.010	Applicability of Regulations	212
23D.48.020	Purposes	212
23D.48.030	Uses Permitted.....	213
23D.48.040	Reserved	215
23D.48.050	Special Provisions -- Design Review.....	215
23D.48.060	Reserved	215
23D.48.070	Development Standards.....	215
23D.48.080	Parking -- Number of Spaces	216
23D.48.090	Findings.....	217
23D.52	R-SMU RESIDENTIAL SOUTHSIDE MIXED USE DISTRICT PROVISIONS	218
23D.52.010	Applicability of Regulations	218
23D.52.020	Purposes	218
23D.52.030	Uses Permitted.....	219
23D.52.040	Reserved	221
23D.52.050	Special Provisions -- Design Review.....	223
23D.52.060	Commercial Additions and Conversions of Existing Buildings -- Requirements for Use Permits.....	223
23D.52.070	Development Standards.....	223
23D.52.080	Parking -- Number of Spaces	225
23D.52.090	Findings.....	226
SUB-TITLE 23E	PROVISIONS APPLICABLE IN ALL NON-RESIDENTIAL DISTRICTS	227
23E.04	LOT AND DEVELOPMENT STANDARDS	229
23E.04.010	Lot Requirements	229
23E.04.020	Heights	229
23E.04.030	Yards and Building Separations	229
23E.04.040	Fences and Other Unenclosed Accessory Structures.....	230
23E.04.050	Special Yard Requirements for C- Lots Abutting Residential Zones	230
23E.04.060	Special Building Feature Requirements for C- Lots Abutting Residential Zones.....	230
23E.08	DESIGN REVIEW	232
23E.08.010	Purpose	232

Title 23 TABLE OF CONTENTS

23E.08.020	Applicability.....	232
23E.08.030	Applicability of Design Review: Criteria	233
23E.08.040	Design Review Standards	233
23E.12	DESIGN REVIEW PROCESS	234
23E.12.010	Application Requirements.....	234
23E.12.020	Responsibility for Design Review	234
23E.12.030	Design Review Timeline	235
23E.12.040	Design Review Procedures	235
23E.12.050	Design Review Committee Proceedings	235
23E.12.060	Staff Level Design Review Proceedings.....	235
23E.12.070	Review of Building Plans	236
23E.16	SPECIAL USE STANDARDS.....	237
23E.16.010	Hours of Operation	237
23E.16.020	Outdoor Uses	237
23E.16.030	Adult-Oriented Businesses	237
23E.16.040	Alcoholic Beverages	237
23E.16.050	Amusement Arcades	240
23E.16.060	Protected Uses	240
23E.16.070	Repealed by Ord. 7648-NS	240
23E.16.080	Non-Chartered Financial Institutions	240
23E.18	TEMPORARY OUTDOOR USES ON PRIVATE PROPERTY	240a
23E.18.010	Purpose	240a
23E.18.020	Definitions.....	240a
23E.18.030	Applicability.....	240a
23E.18.040	Requirements	240b
23E.18.050	Operating Standards	240b
23E.18.060	Remedies	240c
23E.20	LIVE/WORK PROVISIONS	241
23E.20.010	Applicability of Regulations.....	241
23E.20.020	Purposes	241
23E.20.030	Business License Required	241
23E.20.040	Employment, Client and Customer Visits	242
23E.20.050	Portions of Unit Not to be Separately Rented or Sold	242
23E.20.060	Usable Open Space	242
23E.20.070	Change of Use to or from Live/Work Units	242
23E.20.080	Low Income Inclusionary Live/Work Units	243
23E.20.090	Findings	243
23E.24	SIDEWALK CAFE SEATING	244
23E.24.010	Purpose	244

Title 23 TABLE OF CONTENTS

23E.24.020	Termination of AUPs for Sidewalk Cafe Seating	244
23E.24.030	Sidewalk Cafe Seating After Termination is Violation of Zoning Ordinance and Prohibited Encroachment	244
23E.28	OFF-STREET PARKING AND TRANSPORTATION SERVICES FEE	245
23E.28.010	Purposes	245
23E.28.020	Applicability	245
23E.28.030	Off-site Parking Requirements	246
23E.28.040	Traffic Engineering Requirements	246
23E.28.050	Number of Parking Spaces Required	247
23E.28.060	Joint Use of Off-street Parking Spaces	247
23E.28.070	Bicycle Parking.....	247
23E.28.080	Location and Screening of Parking Spaces and Driveways.....	248
23E.28.090	In-lieu Parking Fee	249
23E.28.100	Transportation Services Fee	249
23E.28.110	Payment and Collection	249
23E.28.120	Use of TSF Funds	249
23E.28.130	Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, MU and R-SMU Districts	249
23E.28.140	Required Findings for Parking Reductions Under Section 23E.28.130 for C Districts	250
23E.28.145	Required Findings for Parking Reductions Under Section 23E.28.130 for M, MM, and MU Districts	251
23E.32	LOADING SPACE REQUIREMENTS.....	252
23E.32.010	Off-Street Loading Spaces	252
23E.32.020	Off-Street Loading Spaces for Commercial Districts.....	252
23E.32.030	Off-Street Loading Spaces for Manufacturing and Mixed Use Districts.....	252
23E.36	C-1 GENERAL COMMERCIAL DISTRICT PROVISIONS	253
23E.36.010	Applicability of Regulations	253
23E.36.020	Purposes	253
23E.36.030	Uses Permitted.....	254
23E.36.040	Reserved	259
23E.36.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	259
23E.36.060	Use Limitations.....	259
23E.36.070	Development Standards.....	260
23E.36.080	Parking -- Number of Spaces	263
23E.36.090	Findings.....	264
23E.40	C-N NEIGHBORHOOD COMMERCIAL DISTRICT PROVISIONS	266
23E.40.010	Applicability of Regulations	266

Title 23 TABLE OF CONTENTS

23E.40.020	Purposes	266
23E.40.030	Uses Permitted	266
23E.40.040	Reserved	271
23E.40.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	271
23E.40.060	Use Limitations	271
23E.40.070	Development Standards	272
23E.40.080	Parking -- Number of Spaces	272
23E.40.090	Findings	273
23E.44	C-E ELMWOOD COMMERCIAL DISTRICT PROVISIONS.....	274
23E.44.010	Applicability of Regulations.....	274
23E.44.020	Purposes	274
23E.44.030	Uses Permitted	275
23E.44.040	Special Provisions -- Numerical Limitations	280
23E.44.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	280
23E.44.060	Use Limitations	280a
23E.44.070	Development Standards	281
23E.44.080	Parking -- Number of Spaces	282
23E.44.090	Findings	282
23E.48	C-NS NORTH SHATTUCK COMMERCIAL DISTRICT PROVISIONS	283
23E.48.010	Applicability of Regulations.....	283
23E.48.020	Purposes	283
23E.48.030	Uses Permitted	284
23E.48.040	Reserved	289
23E.48.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	289
23E.48.060	Use Limitations	289
23E.48.070	Development Standards	290
23E.48.080	Parking -- Number of Spaces	290a
23E.48.090	Findings	291
23E.52	C-SA SOUTH AREA COMMERCIAL DISTRICT PROVISIONS	292
23E.52.010	Applicability of Regulations.....	292
23E.52.020	Purposes	292
23E.52.030	Uses Permitted	293
23E.52.040	Reserved	298
23E.52.050	Construction of New Floor Area -- Requirements for Use Permits	298
23E.52.060	Use Limitations	298
23E.52.070	Development Standards	298

Title 23 TABLE OF CONTENTS

23E.52.080	Parking -- Number of Spaces	300
23E.52.090	Findings.....	301
23E.56	C-T TELEGRAPH AVENUE COMMERCIAL DISTRICT PROVISIONS	303
23E.56.010	Applicability of Regulations	303
23E.56.020	Purposes	303
23E.56.030	Uses Permitted.....	304
23E.56.040	Reserved	309
23E.56.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	309
23E.56.060	Use Limitations.....	309
23E.56.070	Development Standards.....	310
23E.56.080	Parking -- Number of Spaces	311
23E.56.090	Findings.....	312
23E.60	C-SO SOLANO AVENUE COMMERCIAL DISTRICT PROVISIONS	313
23E.60.010	Applicability of Regulations	313
23E.60.020	Purposes	313
23E.60.030	Uses Permitted.....	314
23E.60.040	Reserved	319
23E.60.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits	319
23E.60.060	Use Limitations.....	319
23E.60.070	Development Standards.....	319
23E.60.080	Parking -- Number of Spaces	320
23E.60.090	Findings.....	321
23E.64	C-W WEST BERKELEY COMMERCIAL DISTRICT PROVISIONS	323
23E.64.010	Applicability of Regulations	323
23E.64.020	Purposes	323
23E.64.030	Uses Permitted.....	324
23E.64.040	Special Provisions: Designated Nodes	331
23E.64.050	Construction of New Floor Area and Conversions of Existing Buildings, Requirements for Use Permits.....	332
23E.64.060	Use Limitations.....	333
23E.64.070	Development Standards.....	333
23E.64.080	Off-Street Parking and Loading Requirements	334
23E.64.090	Findings.....	336
23E.68	C-DMU DOWNTOWN MIXED USE DISTRICT PROVISIONS	338
23E.68.010	Applicability of Regulations	338
23E.68.020	Purpose	338
23E.68.030	Uses Permitted.....	338

Title 23 TABLE OF CONTENTS

23E.68.040	Downtown Arts District Overlay	343
23E.68.050	Construction of New Floor Area: Use Permits	344
23E.68.060	Use Limitations	344
23E.68.065	Performance Standards.....	344
23E.68.070	Development Standards	345
23E.68.075	Fee to Implement Streets and Open Space Improvement Plan (SOSIP)	346
23E.68.080	Parking -- Number of Spaces	347
23E.68.085	Green Building Provisions	348
23E.68.090	Findings	348
23E.70	C-AC Adeline Corridor Commercial District Provisions	350a
23E.70.010	Applicability of Regulations.....	350a
23E.70.020	Purposes	350a
23E.70.030	Uses Permitted	350b
23E.70.040	Special Provisions: Adeline Corridor Specific Plan Subareas ..	350h
23E.70.045	Special Provisions: Ground Floor Uses.....	350h
23E.70.050	Construction of New Floor Area -- Requirements for Use Permits	350i
23E.70.060	Use Limitations	350i
23E.70.070	Development Standards	350i
23E.70.080	Parking -- Number of Spaces	350k
23E.70.085	Design Standards	350l
23E.70.090	Findings	350l
23E.72	M MANUFACTURING DISTRICT PROVISIONS	351
23E.72.010	Applicability of Regulations.....	351
23E.72.020	Purposes	351
23E.72.030	Uses Permitted	352
23E.72.040	Repealed by Ord. 7625-NS	355
23E.72.045	Special Provisions: Manufacturing, Wholesale Trade and Warehouse	355
23E.72.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits	356

Title 23 TABLE OF CONTENTS

23E.72.060	Use Limitations	356	
23E.72.070	Development and Performance Standards	356	
23E.72.080	Off-Street Parking and Loading Requirements.....	358	
23E.72.090	Findings	359	
23E.76	MM	MIXED MANUFACTURING DISTRICT PROVISIONS	361
23E.76.010	Applicability of Regulations.....	361	
23E.76.020	Purposes	361	
23E.76.030	Uses Permitted	362	
23E.76.040	Special Provisions: Manufacturing, Wholesale Trade, Warehousing.....	365	
23E.76.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits	366	
23E.76.060	Use Limitations	367	
23E.76.070	Development and Performance Standards	367	
23E.76.080	Off-Street Parking and Loading Requirements.....	367	
23E.76.090	Findings	368	
23E.80	MU-LI	MIXED USE-LIGHT INDUSTRIAL DISTRICT PROVISIONS ..	370
23E.80.010	Applicability of Regulations.....	370	
23E.80.020	Purposes	370	
23E.80.030	Uses Permitted	371	
23E.80.040	Special Provisions: Protected Uses.....	377	
23E.80.045	Special Provisions: Changes of Use/Removal of Floor Area Used for Material Recovery Enterprise, Manufacturing, Wholesale Trade or Warehousing	378	
23E.80.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings.....	379	
23E.80.060	Use Limitations	379	
23E.80.070	Development and Performance Standards	380	
23E.80.080	Off-Street Parking and Loading Requirements.....	381	
23E.80.090	Findings	382	
23E.84	MU-R	MIXED USE-RESIDENTIAL DISTRICT PROVISIONS.....	385
23E.84.010	Applicability of Regulations.....	385	
23E.84.020	Purposes	385	
23E.84.030	Uses Permitted	386	
23E.84.040	Special Provisions: Protected Uses.....	392	
23E.84.050	Physical Changes to Buildings: Conversions of Existing Buildings, Requirements for Use Permits	392	
23E.84.060	Use Limitations and Special Permit Requirements	392	
23E.84.070	Development Standards	393	
23E.84.080	Off-Street Parking and Loading Requirements.....	394	

Title 23 TABLE OF CONTENTS

23E.84.090	Findings.....	396
23E.88	SP	SPECIFIC PLAN DISTRICT PROVISIONS 399
23E.88.010	Applicability of Regulations	399
23E.88.020	Purpose	399
23E.88.030	Uses Permitted.....	399
23E.88.040	Reserved	399
23E.88.050	Reserved	399
23E.88.060	Reserved	400
23E.88.070	Reserved	400
23E.88.080	Reserved	400
23E.88.090	Findings.....	400
23E.92	U	UNCLASSIFIED DISTRICT PROVISIONS..... 401
23E.92.010	Applicability of Regulations	401
23E.92.020	Purposes	401
23E.92.030	Uses Permitted.....	401
23E.92.040	Reserved	402
23E.92.050	Reserved	402
23E.92.060	Reserved	402
23E.92.070	Development Standards.....	402
23E.92.080	Reserved	402
23E.92.090	Findings.....	402
23E.96	H	HILLSIDE OVERLAY DISTRICT PROVISIONS 403
23E.96.010	Applicability of Regulations	403
23E.96.020	Purposes	403
23E.96.030	Uses Permitted.....	403
23E.96.040	Reserved	403
23E.96.050	Reserved	403
23E.96.060	Reserved	403
23E.96.070	Development Standards.....	404
23E.96.080	Reserved	404
23E.96.090	Findings.....	404
23E.98	CIVIC CENTER DISTRICT OVERLAY.....	406
23E.98.010	Applicability of Regulations	406
23E.98.020	Purposes	406
23E.98.030	Uses Permitted.....	407
23E.98.040	Development Standards.....	407
23E.98.050	Definitions.....	407

Title 23 TABLE OF CONTENTS

SUB-TITLE 23F	DEFINITIONS	409
23F.04	DEFINITIONS	411
23F.04.010	Definitions.....	411
APPENDIX A	Table Relating Ordinance Sections: Old Ordinance to New Ordinance Table	443
APPENDIX B	Table Relating Ordinance Sections: New Ordinance to Old Ordinance Table	451
ZONING MAPS		
ZONING INDEX		

Title 23 TABLE OF CONTENTS

Sub-Title 23A

ORDINANCE APPLICABILITY

Chapters:

23A.04	TITLE, ADOPTION AND PURPOSES
23A.08	INTERPRETATION AND CONSTRUCTION OF ORDINANCE
23A.12	GENERAL REGULATIONS
23A.16	ZONING MAPS, DISTRICTS AND BOUNDARIES
23A.20	ZONING ORDINANCE AMENDMENTS
23A.24	APPLICABILITY, EMERGENCIES, INTERPRETATION, SEVERABILITY, RULES OF EVIDENCE AND PROCEDURE

Chapter 23A.04: Title, Adoption and Purposes

Chapter 23A.04

TITLE, ADOPTION AND PURPOSES

Sections:

- 23A.04.010 Title of Ordinance**
- 23A.04.020 Adoption of Ordinance; Repeal of Prior Zoning Ordinance**
- 23A.04.030 Purpose of Ordinance and Relationship to Plans**

Section 23A.04.010 Title of Ordinance

This Ordinance shall be known and cited as the Zoning Ordinance of the City of Berkeley or the Zoning Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.04.020 Adoption of Ordinance; Repeal of Prior Zoning Ordinance

- A. There is hereby adopted a Zoning Ordinance for the City of Berkeley, California, consisting of this Ordinance and the Official Zoning Map, as adopted by the City Council, and as they may be amended from time to time.
- B. Ordinance No. 3018-N.S. and all Ordinances amendatory thereof are hereby repealed upon the effective date of this Ordinance. However, said repeal does not cure or have any effect whatsoever on any violation of Ordinance 3018 - N.S. as amended, that existed on the date of the repeal. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.04.030 Purpose of Ordinance and Relationship to Plans

The purposes of the Zoning Ordinance are to:

- A. Implement the policies of the City's adopted General and Area Plans, including, but not limited to:
 - 1. The City of Berkeley General Plan (2002), as amended;
 - 2. The Berkeley Waterfront Plan (1986);
 - 3. The South Berkeley Area Plan (1988);
 - 4. The Berkeley Downtown Area Plan (2011);
 - 5. The West Berkeley Area Plan (1993);
 - 6. The University Avenue Strategic Plan (1996);
 - 7. The Southside Plan (2011).
- B. Promote and protect the public health, safety, peace, morals, comfort and general welfare by regulating the location and use of land, buildings and structures for residential, commercial, manufacturing and other specified uses to encourage the more appropriate use of land and a compatible and harmonious relationship among land uses.
- C. Provide for the appropriate intensity of development of land and buildings by regulating the establishment, density and change of uses and by regulating the construction of buildings and additions and the size and coverage of lots.
- D. Provide for adequate light and air by limiting the height, bulk and size of buildings and requiring building yard setbacks from property lines as well as separations between buildings.

Chapter 23A.04: Title, Adoption and Purposes

- E. Provide for adequate usable open space, off-street parking and off-street loading spaces for specified land uses by requiring certain reservations of land and structures for such purposes, and by regulating the number, placement and location of such spaces and areas.
- F. Prevent adverse effects of commercial and manufacturing activities by limiting the hours, intensity, presence of outdoor activities and other aspects of land uses and specified special uses; and also limit the number and size of certain establishments in specified Districts.
- G. Allow review of major changes in buildings by regulating proposals for their demolition, conversion or relocation.
- H. Ensure that the construction and alteration of buildings in non-residential Districts is compatible with the existing neighborhoods by requiring design review to provide for a pleasing Berkeley environment and encourage excellence in design.
- I. Protect the City's existing housing stock by regulating the reduction in size, removal, demolition or conversion of dwelling units, group living accommodations and residential hotel rooms.
- J. Promote the development of affordable housing for all citizens and in particular for citizens with low and moderate incomes.
- K. Incorporate the substantive provisions of the Neighborhood Preservation Ordinance (NPO), a citizen initiative, to the extent permitted by law. (Ord. 7323-NS § 1, 2014; Ord. 7210-NS § 2, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.08

INTERPRETATION AND CONSTRUCTION OF ORDINANCE

Sections:

23A.08.010	Use of Language
23A.08.020	Use of Acronyms
23A.08.030	Use of Numbers
23A.08.040	Rounding of Quantities
23A.08.050	General Rules of Format

The following shall apply to the text provisions of this Ordinance:

Section 23A.08.010 Use of Language

The language of this Ordinance shall be interpreted liberally to promote the public health, safety, comfort, convenience and general welfare.

- A. In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply.
- B. The following meaning of general terms shall apply:
 - 1. *And* indicates that all connected items or provisions shall apply;
 - 2. *And/or* indicates that any of the connected items or provisions in singular or in combination apply;
 - 3. *Application* means a written application for issuance of any permit;
 - 4. *Approval* means approval of any permit;
 - 5. *Board* means the Zoning Adjustments Board;
 - 6. *Commission* means the Planning Commission;
 - 7. *Committee* means the Design Review Committee;
 - 8. *Council* means the City Council;
 - 9. *Either...or* indicates that the connected items or provisions shall apply singly but not in combination;
 - 10. *May* indicates that the action is discretionary;
 - 11. *Or* indicates that the connected items or provisions may apply singly or in any combination;
 - 12. *Permit* means any Use Permit, whether issued administratively or by the Zoning Adjustments Board after public hearing and any Variance, unless the context requires otherwise;
 - 13. *Shall* indicates that the action is always mandatory and is not discretionary. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.08: Interpretation and Construction of Ordinance

Section 23A.08.020 Use of Acronyms

A. The following acronyms are listed below:

ADA	Americans with Disabilities Act
AUP	Administrative Use Permit
BMC	Berkeley Municipal Code
FAR	Floor Area Ratio
HUD	U.S. Department of Housing and Urban Development
LPC	Landmarks Preservation Commission
TSF	Transportation Services Fee
UBC	Uniform Building Code
UP(PH)	Use Permit, Public Hearing
ZAB	Zoning Adjustments Board
ZC	Zoning Certificate

(Ord. 6478-NS § 4 (part), 1999)

Section 23A.08.030 Use of Numbers

Consecutive calendar days shall be used when calculating the number of days in a time period specified in this Ordinance. In the event a time period ends on a Saturday, Sunday or holiday observed by the City, the time period shall end on the next consecutive business day. Appeal and notice periods shall commence on the next business day from the date a notice or appeal is issued. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.08.040 Rounding of Quantities

Except as otherwise specified, whenever a numerical quantity specified by this Ordinance is a fraction of a whole number, such quantities are to be rounded to the nearest highest whole number when the fraction is one-half (0.5) or more and to the next lowest whole number when the fraction is less than one-half (0.5). (Ord. 6478-NS § 4 (part), 1999)

Section 23A.08.050 General Rules of Format

- A. Sub-title, Chapter, Section and sub-section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any provision of this Ordinance.
- B. In case of any difference of meaning or implication between the text of any provision and any illustration, the text shall control. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.12: General Regulations

Chapter 23A.12

GENERAL REGULATIONS

Sections:

- 23A.12.010** **Uses and Buildings Must Comply with Ordinance**
- 23A.12.020** **Lot Changes Shall Comply with Ordinance**
- 23A.12.030** **Yards, Open Space and Lot Coverage Shall Comply with Ordinance**
- 23A.12.040** **Buildings Shall Not Cross Property Lines**
- 23A.12.050** **Phases within One Year Time Period Count as One Project for Threshold Regulations**

Section 23A.12.010 **Uses and Buildings Must Comply with Ordinance**

No land or building shall be used, or designed to be used, nor shall any new building or structure be constructed and no existing building or structure shall be moved, altered, enlarged, structurally altered, reduced, reconstructed or demolished except as permitted by this Ordinance, either as of right or by permit. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.12.020 **Lot Changes Shall Comply with Ordinance**

- A. No lot shall hereafter be subdivided or reduced in size, nor shall any lot line be adjusted or redrawn, so that any resultant lot conflicts with the provisions of this Ordinance or affects any of the following applicable requirements of the District in which such lot is situated such that:
 - 1. The area required for a lot or building site and/or any lot width or depth is reduced below minimum requirements;
 - 2. The area per dwelling unit, area for off-street parking spaces or usable open space area is reduced below minimum requirements;
 - 3. The setback or driveway dimension is reduced below minimum requirements for any existing building or the creation of any building site in which whose setbacks or driveways would require a Use Permit or Variance.
- B. Any deed of conveyance, sale or contract to sell made contrary to the provisions of this Section is voidable at the sole option of the grantee, buyer or person contracting to purchase, their beneficiaries, personal representative or trustee in insolvency or bankruptcy within one (1) year after the date of execution of the deed of conveyance, sale or contract. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.12.030 **Yards, Open Space and Lot Coverage Shall Comply with Ordinance**

- A. No yard or other open space surrounding any building shall be encroached upon or reduced, nor shall the coverage of any lot be exceeded, except as permitted by this Ordinance, either as of right, by permit or by variance.
- B. No yard or open space provided for a building for the purpose of complying with the provisions of this Ordinance shall be considered as providing a yard or open space for any other building or any other lot. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.12.040 **Buildings Shall Not Cross Property Lines**

No building or structure shall be constructed or moved, no lot shall hereafter be subdivided or reduced in size, nor shall any property line be adjusted or redrawn, so as to result in a building or structure being located upon or

Chapter 23A.12: General Regulations

over any property line, except that, as permitted by this Ordinance, awnings and other architectural features shall be permitted to project over a common property line with the public right-of-way, and fences may be erected upon common boundary lines. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.12.050 Phases within One Year Time Period Count as One Project for Threshold Regulations

For purposes of determining whether a non-residential project application for any Permit or entitlement, including Zoning Certificates and building permits, is subject to any requirement of this Ordinance which applies only in the event certain development or use thresholds are reached, any construction or change of use which is subject to the same regulation and was completed within one (1) year prior to the application in question, shall be deemed part of the same application. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.16: Zoning Maps, Districts and Boundaries

Chapter 23A.16

ZONING MAPS, DISTRICTS AND BOUNDARIES

Sections:

- 23A.16.010 Official Zoning Map**
- 23A.16.020 Property Classified in Districts**
- 23A.16.030 District Boundaries**

Section 23A.16.010 Official Zoning Map

The Official Zoning Map of the City of Berkeley is hereby adopted. The Official Zoning Map, as it may be amended from time to time, is incorporated herein, and shall be kept on file in the office of the City Clerk. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.16.020 Property Classified in Districts

A. All property within the City is hereby placed in Zoning Districts, as indicated on the Official Zoning Map, which are listed as follows:

R-1	Single Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside
R-SMU	Residential Southside Mixed Use
C-1	General Commercial
C-N	Neighborhood Commercial
C-E	Elmwood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-W	West Berkeley Commercial
C-DMU	Downtown Mixed-Use
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial
MU-R	Mixed Use-Residential
SP	Specific Plan
U	Unclassified
(H)	Hillside (Overlay)

Chapter 23A.16: Zoning Maps, Districts and Boundaries

- B. All portions of the City not specifically included in any other District on the Official Zoning Map are hereby designated and classified as Unclassified or U Districts.
- C. For each District, a separate set of provisions shall apply to the properties classified therein, as set forth in the corresponding Chapters of Sub-title 23D or 23E.
- D. The use herein of any letter-prefixed designation of a District, including but not limited to R- (residential), C- (commercial), M- (manufacturing) or MU- (mixed use), without an accompanying number or letter designation, shall include all Districts of the class indicated by the letter designation. (Ord. 7323-NS § 2, 2014; Ord. 7210-NS § 3, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23A.16.030 District Boundaries

The determination of boundaries between the Districts, and the application of District regulations on properties classified in two (2) or more Districts, or split by the municipal boundary, are subject to the following provisions:

- A. Whenever any uncertainty exists as to any part of any boundary shown on the Official Zoning Map, the following provisions shall apply:
 - 1. Where boundaries are indicated as approximately following the center line of streets or alleys or the lot lines, such lines shall be construed to be such boundaries;
 - 2. Where a boundary divides a lot, the location of such boundary, unless indicated by dimensions or legal descriptions, shall be determined by use of the scale appearing on the Official Zoning Map.
- B. In the case of a lot or combined lots that are divided by a boundary between two (2) or more Districts, each part of the lot shall be subject to the provisions of the District in which it is located; except that the yard requirements of a District applying to one part of a lot may be applied to the part of the lot located in another District upon issuance of a Use Permit and subject to the following limitations:
 - 1. The aggregate amount of development of the proposed project or use, as measured by density (or Floor Area Ratio (FAR)), shall not exceed the sum of the development potential of all of the parts of the lot if each part that is zoned differently were developed under that respective District's regulations only; and
 - 2. No part of the lot shall be used other than for the uses permitted in the District in which it is located.
- C. In the case of overlay districts, the height, coverage, parking and usable open space shall comply with the provisions of the underlying District.
- D. Where a public street or alley or any portion thereof is officially vacated or abandoned, the land area of such vacated street or alley shall acquire the District classification of the property to which it reverts. (Ord. 7323-NS § 3, 2014; Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.20: Zoning Ordinance Amendments

Chapter 23A.20

ZONING ORDINANCE AMENDMENTS

Sections:

23A.20.010	Amendments
23A.20.020	Initiation
23A.20.030	Consideration by Planning Commission
23A.20.040	Planning Commission Action Forwarded to City Council
23A.20.050	Effect of Planning Commission Action
23A.20.060	Consideration By City Council
23A.20.070	Effect of Council Approval
23A.20.080	Resubmittal of Petition for Reclassification

Section 23A.20.010 Amendments

This Ordinance and the Official Zoning Map may be amended as set forth herein. All amendments to the Official Zoning Map shall be noted thereon with the date and number of the amending Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.020 Initiation

- A. Amendments to the text of the Zoning Ordinance may be initiated by resolution of the Planning Commission or the City Council which contains a general description of the proposed regulations, whether they are new provisions, amendments to existing provisions, repeal of existing provisions or some combination thereof.
- B. Amendments to the Official Zoning Map may be initiated in either of the two following ways:
 1. A reclassification may be initiated by resolution of the Planning Commission or the City Council which describes the present District classification of the affected property or properties, the proposed District classification and refers to an attached map that illustrates the affected property or properties.
 2. A reclassification may be initiated by a written petition of the record owner or owners of the property affected by the proposed reclassification, by a purchaser thereof under a contract in writing duly executed and acknowledged by both the buyer and seller, by a lessee in possession of the property with the written consent of the owner of record of the legal title to make such application or by the agent of any of the foregoing duly authorized thereto in writing, on a form furnished by the Secretary of the Planning Commission. The petition shall contain such information as may be required by the Commission, shall be filed with the Secretary of the Commission, and shall be accompanied by a fee as set by resolution of the City Council. In the event of a reclassification initiated by petition, the costs of notifying persons, as set forth below, shall be borne by the petitioner(s).
- C. In addition, the Planning Commission may initiate a text amendment or reclassification without holding a public hearing upon the affirmative vote of six members. Amendments so initiated shall be effective immediately, for sixty (60) days, after which time they shall cease to be effective if no public hearing has been held and no action has been taken to adopt the amendment. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.030 Consideration by Planning Commission

- A. All text amendments and reclassifications shall be referred to the Planning Commission, which shall consider them at a public hearing within thirty (30) days after adoption of the resolution initiating them or filing of the petition, as the case may be.

Chapter 23A.20: Zoning Ordinance Amendments

- B. Prior to the Planning Commission's consideration of any proposal for reclassification, the Secretary of the Commission shall prepare a Notice of Public Hearing containing a written summary describing the proposed reclassification, including a description of the present District classification of the affected property, the proposed District classification and an attached map that illustrates the affected property. The notice shall also state how to obtain further information, how to submit written comments, and information on the time and location of the public hearing.
1. When a land area involved in the proposed reclassification is less than five (5) acres, the Notice of Public Hearing described above shall be posted at three (3) visible locations in the vicinity of the subject property or properties involved not fewer than fourteen (14) days prior to the date of the hearing; and by mailing a notice to each owner of property involved, to resident tenants and to neighborhood organizations, and within three hundred (300) feet of any part of the subject property or properties, not fewer than fourteen (14) days prior to the date of such hearing;
 2. When the land area involved in the proposed reclassification is five (5) acres or more, at least one (1) of the Notices of Public Hearing described above shall be posted at or adjacent to each block front involved, not fewer than fourteen (14) days prior to the date of the hearing; and shall be distributed to all owners of properties, tenants and neighborhood organizations (either by mail or door-to-door distribution); and it shall also be published twice in a newspaper of general circulation in the City, once not fewer than fourteen (14) days prior to the date of the hearing, and once not fewer than seven (7) days prior to the date of the hearing.
- C. Failure of any property owner to receive a mailed notice or to observe a posted or published notice shall not affect the validity of any proceedings held in conformity with the provisions of this Section.
- D. Planning Commission hearings shall be open to the public and all persons shall be given the opportunity to present their views and to be heard. Any person or persons desiring to be heard on any proposed reclassification may file with the Secretary of the Commission a statement in writing or may present it verbally at said hearing. The Commission may continue any hearing under this Chapter from time to time.
- E. The Commission may make a field investigation if it deems such course expedient, and from such investigation and from the hearing shall prepare a report setting forth a general summary of the facts and conditions involved in the reclassification.
- F. After the Commission has conducted a public hearing, it may vote to adopt, modify or reject the initiated amendment or reclassification. (Ord. 7323-NS § 4, 2014; Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.040 Planning Commission Action Forwarded to City Council

Any text amendment or reclassification initiated by the Planning Commission, along with a report of the Commission's action thereon and all the information presented to the Commission, shall be forwarded to the City Council for final consideration within thirty (30) days of the date of the Commission's action, and shall be considered by the Council not more than sixty (60) days after receipt of said document from the Secretary of the Commission by the City Clerk. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.050 Effect of Planning Commission Action

- A. An amendment or reclassification adopted by the Planning Commission shall remain in effect for a period of six (6) months from the date on which it was adopted. This period of time can be extended by the City Council for a period or periods of time not to exceed an additional eighteen (18) months or no more than a total of twenty-four (24) months maximum. If the City Council neither adopts the amendment or reclassification within the above time periods nor extends the time periods, then the amendment or reclassification shall expire and have no further effect.

Chapter 23A.20: Zoning Ordinance Amendments

- B. During any period set forth above in which an amendment or reclassification is effective, it shall apply immediately to any use which has not yet lawfully commenced and to any building on which lawful construction has not yet started. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.060 Consideration By City Council

- A. The City Council may approve, modify or reject a proposed amendment or any part thereof without holding a public hearing, but may set the matter for a public hearing if it so chooses.
- B. The City Council shall hold a public hearing, and the City Clerk shall provide notice in the same manner as required for Planning Commission hearings on reclassifications under any of the following circumstances:
 - 1. A larger area, or additional properties, than were considered by the Planning Commission are proposed to be reclassified;
 - 2. The District into which the properties are proposed to be reclassified is different from that previously approved by the Planning Commission;
 - 3. Any written protests have been filed with the Secretary of the Planning Commission or the City Clerk;
 - 4. It chooses to hold a public hearing.
- C. City Council hearings shall be open to the public, and all persons shall be given the opportunity to present their views and to be heard. Any person or persons desiring to be heard on any proposed reclassification may file with the City Clerk a statement in writing or may present it verbally at said hearing. The Council may continue any hearing under this Chapter from time to time. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.070 Effect of Council Approval

- A. Provisions of any amendment or reclassification which are more restrictive than the provisions they replace become effective immediately.
- B. Provisions of any amendment or reclassification which are less restrictive than the provisions they replace do not become effective until the Ordinance containing the amendments becomes effective, namely, thirty (30) days after the second reading of the Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.080 Resubmittal of Petition for Reclassification

- A. Whenever a reclassification initiated by petition has been denied by the City Council, no petition to reclassify the same property or properties to the same District shall be filed within one (1) year from the date of the denial of the original petition, except that the Council may, at its discretion, permit the filing of a new petition at any time after six (6) months from the date of the denial of the original petition.
- B. Any request to the City Council to file a new petition shall state that there are changed circumstances in relation to the property for which reclassification is sought and shall describe those circumstances, and shall be accompanied by written withdrawals by the property owners who previously objected to the reclassification.
- C. If the City Council denies permission to file a new petition or after granting such permission refuses to reclassify the property, no new petition to reclassify the same property or properties to the same District shall be filed within one (1) year from the date of the denial of the original petition. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23A.24

APPLICABILITY, EMERGENCIES, INTERPRETATION, SEVERABILITY, RULES OF EVIDENCE
AND PROCEDURE

Sections:

- 23A.24.010 **Applicability**
- 23A.24.020 **Emergencies**
- 23A.24.030 **Interpretation and Effect**
- 23A.24.040 **Rules of Evidence and Procedure**

Section 23A.24.010 Applicability

- A. This Ordinance applies to all property in the City of Berkeley, including property owned by the City of Berkeley and other jurisdictions and governmental entities, to the full extent permitted by law.
- B. This Ordinance does not apply to uses or structures wholly within or on properties constituting the public right-of-way unless otherwise specifically provided. Such uses or structures shall, however, be subject to the Encroachment Permit regulations set forth in Chapter 16.18. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.020 Emergencies

- A. The City Council may, without compliance with the notice or other procedures required by this Ordinance, permit the establishment of a use or the construction of a structure or building that is required to ameliorate the effects of the emergency, without the issuance of a Use Permit or Variance, if, by the same vote as is required for the adoption of an urgency Ordinance:
 - 1. It finds or has determined that an emergency exists as defined in Section 2.88.020; and
 - 2. It finds that the use or structure is required to ameliorate the effects of emergency.
- B. Action by the Council under this Section is effective immediately.
- C. Upon the end of the emergency, as declared by the City Council, any and all uses and structures permitted under this section shall cease to be authorized. Such uses or structures shall either be removed, discontinued or become subject to all the provisions of this Ordinance, including all permit requirements. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.030 Interpretation and Effect

- A. The requirements established by this Ordinance are the minimum requirements necessary to promote of the public health, safety, comfort, convenience and general welfare.
- B. Except as specifically herein provided, this Ordinance does not repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or Ordinance or any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the erection, construction, establishment, moving, alteration or enlargement of any building or improvement.
- C. Except as otherwise provided herein, no provision of this Ordinance shall be construed as relieving any party to whom a Use Permit or Variance is issued from any requirement of state or federal law, or from any provision, Ordinance, rule, subdivision approval or regulation of the City requiring a license, franchise or permit to accomplish, engage in, carry on or maintain a particular business, enterprise, occupation, transaction or use.

Chapter 23A.24: Applicability, Emergencies, Interpretation, Severability, Rules Of Evidence

- D. This Ordinance does not interfere with or abrogate or annul any easement, covenant or other agreement between parties. However, in cases in which this Ordinance imposes a greater restriction than by such easement, covenant or agreement, then the provisions of this Ordinance shall control.
- E. If any Chapter, Section, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of this Ordinance, which shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance and each Chapter, Section, sentence, clause and phrase hereof, irrespective of the fact that any one (1) or more Chapters, Sections, sentences, clauses or phrases be declared invalid or unconstitutional. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.040 Rules of Evidence and Procedure

Except as otherwise expressly provided in this Ordinance, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply. No action, inaction or recommendation made by any City official, employee, commission, board or other entity under this Ordinance shall be void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown. (Ord. 6478-NS § 4 (part), 1999)

Sub-Title 23B

ORDINANCE ADMINISTRATION

Chapters:

23B.04	ZONING ADJUSTMENTS BOARD
23B.08	DESIGN REVIEW COMMITTEE
23B.12	ZONING OFFICER
23B.16	USE OF CONFLICT RESOLUTION OR MEDIATION SERVICE
23B.20	ZONING CONFORMANCE REVIEW
23B.24	APPLICATIONS FOR PERMITS
23B.28	ADMINISTRATIVE USE PERMITS
23B.32	USE PERMITS
23B.34	GREEN PATHWAY
23B.36	MASTER USE PERMITS
23B.40	AUPS FOR TEMPORARY USES
23B.44	VARIANCES
23B.48	MODIFICATION OF DEVELOPMENT STANDARDS
23B.52	REASONABLE ACCOMMODATION
23B.56	CONDITIONS APPLICABLE TO ALL PERMITS
23B.60	COMPLIANCE AND REVOCATION
23B.64	ABATEMENT OF NUISANCES
23B.68	PRIVATE RIGHT OF ACTION

Chapter 23B.04: Zoning Adjustments Board

Chapter 23B.04

ZONING ADJUSTMENTS BOARD

Sections:

- 23B.04.010 Zoning Adjustments Board Membership**
- 23B.04.020 Responsibilities and Powers of the Board**

Section 23B.04.010 Zoning Adjustments Board Membership

- A. The City shall establish and maintain a Zoning Adjustments Board, hereafter referred to as the Board, to administer the provisions of this Ordinance as herein provided. Decisions of the Board may be appealed to the City Council, as set forth herein.
- B. The Board shall consist of nine (9) members, appointed by Council members and the Mayor in accordance with Chapter 2.04 of the BMC. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.04.020 Responsibilities and Powers of the Board

- A. The Board shall elect a Chairperson and Vice Chairperson. The Board shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.
- B. The Board shall have power to:
 - 1. Grant, deny, conditionally approve or modify applications for Use Permits and Variances;
 - 2. Hear appeals of decisions to the Zoning Officer with respect to Administrative Use Permits and other matters, as authorized by this Ordinance;
 - 3. Review, modify or revoke previously issued Use Permits and Variances;
 - 4. Undertake other proceedings to enforce this Ordinance, including abatement of public nuisances;
 - 5. Refer matters within its jurisdiction to a mediation or conflict resolution service, as set forth herein, prior to final action on them;
 - 6. Upon request, make recommendations on other matters brought to its attention by the Council, the Planning Commission or any other City Board or Commission; and
 - 7. Adopt written regulations not inconsistent with this Ordinance for the administration of this Ordinance. Such regulations shall be available to the public.
- C. When reviewing any decision of the Zoning Officer on appeal, the Board shall use the same standards for decision making and is required to make the same findings as the Zoning Officer with respect to the matter on appeal. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.08: Design Review Committee

Chapter 23B.08

DESIGN REVIEW COMMITTEE

Sections:

23B.08.010 Design Review Committee

23B.08.020 Responsibilities and Powers of the Design Review Committee

Section 23B.08.010 Design Review Committee

- A. The City shall establish and maintain a Design Review Committee as a committee of the Zoning Adjustments Board, hereafter referred to as the Committee, to administer Chapters 23E.08 and 23E.12.
- B. The Committee shall include seven (7) members, as follows:
 - 1. Two (2) members of the Zoning Adjustments Board;
 - 2. One (1) member of the Landmarks Preservation Commission (LPC);
 - 3. One (1) member of the Civic Arts Commission (CAC); and
 - 4. Three (3) members of the public who are residents of the City.
- C. Members from Boards and Commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the Board. The membership of the Committee shall include a minimum of two (2) licensed architects, one (1) licensed landscape architect and two (2) laypersons, defined for the purposes of this section as a person who is neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture. (Ord. 6969-NS § 1, 2007; Ord. 6478-NS § 4 (part), 1999)

Section 23B.08.020 Responsibilities and Powers of the Design Review Committee

- A. The Committee shall elect a Chairperson and Vice Chairperson, adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.
- B. The Committee shall consider applications for Design Review and either approve, modify or deny such applications, pursuant to Chapters 23E.08 and 23E.12.
- C. Decisions of the Committee may be appealed to the Board, by the procedures set forth in Chapter 23E.12.
- D. Upon request, the Committee may make a recommendation on matters brought to its attention by the Board, the Planning Commission, the Council or any other City Board or Commission. Such recommendations shall be limited to the subject areas of its expertise. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.12: Zoning Officer

Chapter 23B.12

ZONING OFFICER

Sections:

23B.12.010	Zoning Officer
23B.12.020	Responsibilities and Powers of the Zoning Officer
23B.12.030	Secretary to the Zoning Adjustments Board
23B.12.040	Secretary to the Design Review Committee

Section 23B.12.010 Zoning Officer

- A. The City Manager shall designate an employee to act as Zoning Officer.
- B. The Zoning Officer, or their designee, shall act as the Secretary to the Zoning Adjustments Board and the Design Review Committee. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.12.020 Responsibilities and Powers of the Zoning Officer

- A. The Zoning Officer has the authority to:
 1. Make determinations as to zoning conformity and staff-level design review decisions;
 2. Issue Zoning Certificates as set forth in Chapter 23B.20;
 3. Issue Administrative Use Permits to the extent provided in this Ordinance;
 4. Interpret and enforce this Ordinance, subject to the review by the Board and Council;
 5. Issue written regulations not inconsistent with this Ordinance for the administration of this Ordinance;
 6. Refer applications for Use Permits to a mediation or conflict resolution service, as set forth in herein;
 7. Request legal opinions from the City Attorney on legal questions regarding pending applications. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.12.030 Secretary to the Zoning Adjustments Board

The Zoning Officer, or their designee, shall act as Secretary to the Board and shall present to the Board applications for Permits or modifications thereto, and shall prepare Staff reports on those applications. The Secretary shall advise the Board on the applicability of this Ordinance and its requirements for each application. The Secretary shall also transmit requests for legal opinions from the Board to the City Attorney on legal questions regarding pending applications. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.12.040 Secretary to the Design Review Committee

The Zoning Officer, or their designee, shall act as Secretary to the Design Review Committee, and administer staff-level design review, as provided in Chapters 23E.08 and 23E.12. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.16: Use of Conflict Resolution or Mediation Service

Chapter 23B.16

USE OF CONFLICT RESOLUTION OR MEDIATION SERVICE

Sections:

23B.16.010 Conflict Resolution and Mediation

23B.16.020 Rules and Expectations of the Conflict Resolution/Mediation Process

Section 23B.16.010 Conflict Resolution and Mediation

The Zoning Adjustments Board or the Zoning Officer may refer an applicant and other persons affected by a pending application to a conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the Board or the Zoning Officer to any result. A referral may be made either before or after a public hearing on a pending Permit decision, but only after an application is deemed complete by the Zoning Officer. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences. It is the policy of the City to encourage applicants and neighbors to have early discussions on proposed projects so that differences may be resolved prior to the submission of an application. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.16.020 Rules and Expectations of the Conflict Resolution/Mediation Process

Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, prior to beginning the process.

- A. The goal of mediation is to seek a mutually agreeable result for the pending application.
- B. Participation for the applicant and others parties is strictly voluntary.
- C. All participants shall be made aware that there is no need to come to an agreement.
- D. The Board or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process; the mediator may ask the Board or the Zoning Officer for a clarification of these issues from time to time.
- E. City Staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Ordinance.
- F. The mediation service will provide the Board or the Zoning Officer with a report as to the result of the mediation within forty-five (45) days of the referral.
- G. If no agreement between the parties is reached within forty-five (45) days, or at any time that the mediator indicates that further meetings between parties is futile, the Board or Zoning Officer shall take up the matter themselves, except that if the parties to the mediation/conflict resolution agree to continue the mediation process, it may be extended for an additional time period not to exceed forty-five (45) days. Unless the applicant expressly waives their rights thereunder in conformance with law, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by State law.
- H. Participants in mediation should be aware that the Board cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Ordinance requires that a project must meet all minimum Ordinance requirements and any other applicable City Ordinances and regulations.
- I. Results of the mediation will in no way be binding upon the Board, and the Board may approve, deny or modify any aspect of any mediated agreement.

Chapter 23B.16: Use of Conflict Resolution or Mediation Service

- J. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by their decision, but may change their mind after the mediation.
- K. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the Board decision to the Council.
- L. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of a Use Permit or Variance, shall be enforceable by the City. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.20: Zoning Conformance Review

Chapter 23B.20

ZONING CONFORMANCE REVIEW

Sections:

23B.20.010	General Regulations
23B.20.020	Zoning Conformance Review
23B.20.030	Determination Limited to Application
23B.20.040	Zoning Certificates
23B.20.045	Zoning Certificates for Temporary Outdoor Uses
23B.20.050	Application and Fee
23B.20.060	Issuance of Zoning Certificates

Section 23B.20.010 General Regulations

The Zoning Certificate serves as a record of the initial establishment of a use, or the construction of a structure, which is allowed as a matter of right. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.020 Zoning Conformance Review

Prior to obtaining any business license, building Permit or subdivision or lot line adjustment, the applicant shall request the Zoning Officer to determine whether the use, building or lot change complies with all provisions of the Ordinance, any applicable Use Permit and that all Use Permit conditions have been satisfied. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.030 Determination Limited to Application

A Zoning Certificate extends only to the building, structure, use, subdivision or lot line adjustment shown in the application for zoning conformance review, and does not in any way validate or constitute approval of any building, structure, use, subdivision or lot line adjustment not shown in the application. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.040 Zoning Certificates

Zoning Certificates shall be required for buildings or structures erected, constructed, altered, repaired or moved, the use of vacant land, changes in the character of the use of land or building, or for substantial expansions in the use of land or building, which are allowed as a matter of right by this Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.045 Zoning Certificates for Temporary Outdoor Uses

- A. Zoning Certificates for Temporary Outdoor Uses shall be required for businesses that are not normally permitted to operate outdoors, but are allowed to operate outdoors on private property during the locally declared state of emergency related to COVID-19 and for 90 days after the emergency is lifted.
- B. Zoning Certificates for Temporary Outdoor Uses are subject to the requirements of Chapter 23B.20 [Zoning Conformance Review]. (Ord. 7725-NS § 2, 2020)

Section 23B.20.050 Application and Fee

- A. Applications and fees for Zoning Certificates shall be submitted in accordance with the provisions set forth in Chapter 23B.24. The Zoning Officer may review applications referred from other City Departments and

Chapter 23B.20: Zoning Conformance Review

Divisions, including but not limited to, applications for building Permits and business licenses and require that applicants submit Zoning Certificate applications, and additional information as needed. No fee shall be required in cases where the legal use of property or building is unchanged and no building alterations occur.

- B. The Zoning Officer shall determine whether proposed uses or structures are allowed by right under this Ordinance. No Zoning Certificate shall be required for continuations of previously approved or permitted uses and structures, uses and structures exempt under Chapter 23C.20 or other uses or buildings already subject to AUPs, Use Permits or Variances in the District in which they are located. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.20: Zoning Conformance Review

Chapter 23B.20: Zoning Conformance Review

Section 23B.20.060 Issuance of Zoning Certificates

- A. Zoning Certificate shall be issued if the Zoning Officer determines that the proposed use or building is allowed as a matter of right by the Ordinance, and conforms to all the applicable development and use standards therein. An approved Zoning Certificate may include attachments of other written or graphic information, including but not limited to, statements, numeric data, site plans, floor plans and building elevations and Sections, as a record of the proposal's conformity with the applicable regulations of this Ordinance.
- B. If the construction of a building or structure or the use established is contrary to the description or illustration in the approved Zoning Certificate so as to either violate any provision of the Ordinance or require additional Permits, then the Zoning Certificate shall be deemed null and void.
- C. A Zoning Certificate is deemed to have been exercised when either the approved use has been established at the subject premises or, in the case of construction, when a valid Building Permit, if required, has been issued for the approved building or structure and construction has commenced. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.24: Applications for Permits

Chapter 23B.24

APPLICATIONS FOR PERMITS

Sections:

23B.24.010	General Requirements
23B.24.020	Persons Who May File an Application
23B.24.030	Application Forms and Supporting Materials--Additional Information for Certain Projects
23B.24.040	Payment, Waiver and Refund of Application Fees
23B.24.050	Determination of Completeness of Applications
23B.24.060	Registry of Organizations to Receive Notice
23B.24.070	Summary Denial of Certain Applications

Section 23B.24.010 General Requirements

- A. Application for any Permit required by this Ordinance shall be made to the Zoning Officer.
- B. Applications shall designate one (1) person as the applicant. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.020 Persons Who May File an Application

- A. The following persons may file applications:
 - 1. The owner of the subject property;
 - 2. An agent representing the owner, duly authorized to do so in writing;
 - 3. A person with a duly executed written contract or exclusive option to purchase the subject property and duly executed written consent to the application by the present owner;
 - 4. A lessee in possession of the subject property, with the written consent of the owner or the owner's authorized designee; and
 - 5. An agency having the right of instituting proceedings of eminent domain.
- B. A lessee in possession of the subject property applying for a Zoning Certificate or Use Permit for a Home Occupation may file without the consent of the owner, provided that in the case of an application for a Use Permit for a Home Occupation, the owner of the property shall be given notice of the application. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.030 Application Forms and Supporting Materials--Additional Information for Certain Projects

- A. Applications for Permits shall be made in writing on those forms provided by the Zoning Officer. The Zoning Officer may require supporting materials as part of the application, including, but not limited to, studies, reports, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project. All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection. The applicant shall be responsible for the accuracy and completeness of all application information submitted to the City.
- B. A list of all pending applications for Permits shall be provided to the Landmarks Preservation Commission at every regular meeting thereof. Each property that is the subject of an application included in that list shall be placed on the agenda for potential initiation. In order to facilitate public notice, applicants shall post a

Chapter 23B.24: Applications for Permits

conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the application involves has its major frontage prior to the date the application is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer. (Ord. 6939-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.040 Payment, Waiver and Refund of Application Fees

- A. Applications for Permits shall be accompanied by the fees as set by resolution of the Council. Payment of the fee is required in order for an application to be complete under the Permit Streamlining Act (PSA), and absent payment of the fee, the application will not be processed unless a fee waiver or deferral is approved as set forth below.
- B. No fee shall be required when the applicant is the City, or if it is waived under any other provision of the BMC.
- C. In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if they find that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver. A letter from the City Manager authorizing the fee waiver or deferral shall be submitted in lieu of a fee before an application will be accepted. Each fee waiver or deferral request shall include a breakdown of all applicable Current Planning Fees, as set forth in the current Fee Resolution.
- D. If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for applications that have been denied. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.050 Determination of Completeness of Applications

The Zoning Officer shall determine whether an application is complete. If it is not complete, the Zoning Officer shall advise the applicant in writing as to the applications for Permit(s), forms, information and fees, including fees required for Environmental Review, that are necessary to complete the application. When an application is determined to be complete the Zoning Officer shall make a record of that date. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.060 Registry of Organizations to Receive Notice

The Zoning Officer shall maintain a registry of organizations to receive notices of public hearings and administrative decisions. Neighborhood and/or community organizations desirous of being included in the registry shall notify the Zoning Officer in writing, and it shall be the responsibility of the organization to notify the Zoning Officer of any changes. Each organization shall submit the following information, at a minimum, to be included in the registry:

- A. The name and address of the organization;
- B. The names, addresses and phone numbers of the contact persons; and
- C. The area of interest within which notices of are to be sent to the organization. This area of interest shall be outlined on an appropriate map. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.24: Applications for Permits

Section 23B.24.070 Summary Denial of Certain Applications

- A. The Zoning Officer may summarily deny any application for a permit that proposes to legalize any alteration or use that is the subject of a final order under Chapter 23B.60 or Chapter 23B.64.
- B. In deciding whether or not to summarily deny an application under this section, the Zoning Officer shall consider:
 - 1. The extent to which the work proposed in the application would be detrimental under Section 23B.32.040A;
 - 2. Whether the applicant had an adequate opportunity to submit the application prior to the adoption of a final order under Chapter 23B.60 or 23B.64; and
 - 3. The level of permit applied for (i.e., AUP, Use Permit or Variance). Applications for variances as a means of legalizing a violation are particularly disfavored.
- C. The Zoning Officer shall not summarily deny applications for permits that are necessary comply with any such order.
- D. A decision by the Zoning Officer to summarily deny an application under subdivision (A) of this section is final.
- E. As used in this section, a "final order" is an order that is final as to the City. (Ord. 6726-NS § 1, 2003)

Chapter 23B.28: Administrative Use Permits

Chapter 23B.28

ADMINISTRATIVE USE PERMITS

Sections:

23B.28.010	Use Permits Issued by the Zoning Officer
23B.28.020	AUPs for Public and City Franchise Uses
23B.28.030	Referral of Applications for AUPs to Board
23B.28.040	Public Notice Requirements for AUPs
23B.28.050	Findings for Issuance and Denial and Conditions
23B.28.060	Appeals of Decision of Zoning Officer to Board

Section 23B.28.010 Use Permits Issued by the Zoning Officer

- A. The Zoning Officer may issue Use Permits for the establishment of uses and the construction of buildings or structures without any consideration or action by the Board when so authorized by this Ordinance. Such administratively issued Use Permits are Administrative Use Permits or AUPs.
- B. The Zoning Officer may issue an AUP only upon making the finding set forth in this chapter, as well as any other findings required by other chapters of this Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.020 AUPs for Public and City Franchise Uses

The Zoning Officer may issue AUPs for any Accessory Buildings for public use or any use on City-owned property that is subject to franchise by the City. AUPs approved under this section are subject to the same automatic stay pursuant to Section 23B.28.060 as all other AUPs. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.030 Referral of Applications for AUPs to Board

If in the judgment of the Zoning Officer an application for an AUP has special neighborhood or community significance, they may schedule the matter for public hearing before the Board, in which case the Board shall review and act upon the application in the same manner as it acts upon other Use Permit applications. In such cases the applicant shall pay a fee for the public hearing, as set by Resolution of the Council. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.040 Public Notice Requirements for AUPs

- A. Prior to the issuance of an AUP, the Zoning Officer shall give notice of their decision to approve, modify or deny an application, through posting and mailing of a Notice of Administrative Decision, which may be appealed as set forth below. The Notice shall describe the proposed use or construction, the Zoning Officer's decision on the Permit application, the location and times in which the application may be reviewed by the public, the procedure and time period in which appeals to the Board may be made, and the address where such appeals may be filed. Appeals may be filed within 20 days after posting and mailing, as set forth below. The Zoning Officer may extend the appeal period for a longer time.
- B. The Notice of Administrative Decision shall be posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
- C. The Notice of Administrative Decision shall also be mailed to, in all cases: neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in Section 23B.24.060; in cases of projects in or adjacent to R- Districts, to owners and residents of properties abutting and confronting the subject property; in cases of major residential additions in the R-1(H) Districts, to property owners and residents in a 300 foot radius; except that when the proposed project or use may have effects on

Chapter 23B.28: Administrative Use Permits

a larger area, the Zoning Officer may include a larger area beyond those described above. The Notice of Administrative Decision shall also be forwarded to the Board and sent to the Main Library. The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.050 Findings for Issuance and Denial and Conditions

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if they determine that they are unable to make any of the required findings, in which case they shall state the reasons for that determination.
- D. The Zoning Officer may attach such conditions to an AUP as they deem reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.060 Appeals of Decision of Zoning Officer to Board

- A. Any person or entity aggrieved by a decision of the Zoning Officer may appeal the decision to the Board. Such appeal shall be made by filing one copy of a written appeal with the Zoning Officer during the appeal period. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.
- B. The filing of a timely appeal stays issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn.
- C. Upon the filing of a timely appeal the Zoning Officer shall set the matter for a public hearing at a future Board meeting.
 - 1. Notice of the hearing shall be given, and the Board shall approve, modify or deny the matter in the time and manner for other public hearings by the Board on Use Permit applications. When the appeal is filed solely by the applicant, the fees for the public hearing, as set by Resolution of the Council, shall be paid by the applicant.
- D. The Board may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.
- E. The decision of the Board may be appealed to the Council in the same time and manner and with the same effect as decisions of the Board with respect to Use Permits. (Ord. 7350-NS § 1, 2014; Ord. 6844-NS § 1 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.32: Use Permits

Chapter 23B.32

USE PERMITS

Sections:

23B.32.010	Use Permits Issued by the Zoning Adjustments Board
23B.32.020	Public Notice Requirements
23B.32.030	Public Hearing and Action
23B.32.040	Findings for Issuance and Denial and Conditions
23B.32.050	Notice of Decision and Appeal
23B.32.060	City Council Public Hearing
23B.32.070	Board Action on Remand
23B.32.080	Certification of Use Permits by City Council
23B.32.090	Repealed by Ord. 7350-NS.

Section 23B.32.010 Use Permits Issued by the Zoning Adjustments Board

Any Use Permit which cannot be issued by the Zoning Officer may be approved by the Board after a public hearing or by the Council if the Board's decision is appealed. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.020 Public Notice Requirements

Prior to the Board's consideration of any Use Permit, a notice of the public hearing on the matter shall be given as described herein:

- A. The Zoning Officer shall prepare a Notice of Public Hearing containing information on the proposed construction or use, for each Use Permit application to be considered by the Board including the following information:
 1. A written summary of the project;
 2. The number of Dwelling Units or square feet of gross floor area; and
 3. Attachments or other information that, in the judgment of the Zoning Officer, are necessary to describe and illustrate the application.
- B. The notice shall also include the environmental review status under the California Environmental Quality Act (CEQA), directions on how to obtain further information, the location and times in which the application may be reviewed by the public, how to submit written comments and information on the time and location of the public hearing.
- C. A Notice of Public Hearing shall be posted at three visible locations in the vicinity of the subject property, and at a bulletin board at the Zoning Counter, not fewer than 14 days prior to the hearing; except that the time period for posting the notice may be either for a longer time period when required by state law or extended by the Zoning Officer and/or Board to a maximum of 30 days for applications of major significance.
- D. The Notice of Public Hearing shall also be mailed, not fewer than 14 days prior to the hearing, to:
 1. Neighborhood and community organizations listed in the registry of neighborhood/community organizations within whose expressed area of interest the project falls;
 2. The owners of properties and residents in the affected area; and
 3. The Main Library.

Chapter 23B.32: Use Permits

- E. For purposes of Paragraph 2 above, the affected area shall consist of, at the minimum, the owners and residents of the abutting and confronting properties, and any other person who has filed a written request for notice, except that when the proposed project or use may have effects to a larger area, the Zoning Officer may include a larger area beyond abutting and confronting properties; and, that in the case of the construction or demolition of one or more Dwelling Units, such area shall include all owners of properties, and residents within 300 feet on the same street or streets, including the abutting properties to the rear or within a 300 foot radius of the subject property, whichever will provide adequate coverage in a given case. In cases of relocated buildings, notice shall be given to property owners and residents within a 300 foot radius of both the Source and Receiving Lots. The Board or Council may enlarge the area of notice when it deems it appropriate.
- F. The time period for mailing the notice may be for a longer time period when required by state law or extended by the Zoning Officer and/or Board for applications of major significance, except that the Zoning Officer or Board may only extend it to a maximum of 30 days.
- G. The validity of the proceedings, however, shall not be affected by the failure of any property owner, resident or neighborhood or community organization to receive such mailed notice. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.030 Public Hearing and Action

Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures. A quorum of the Board as defined in Section 23B.04.020.A must be present to take an action. Any public hearing may be continued from time to time, but not beyond the time limits for reviewing applications established by State law. After the Board has conducted a public hearing, it shall either approve, modify, deny the application or refer it to a mediation or conflict resolution service. If the application is referred to mediation, it must return to the Board for action. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.040 Findings for Issuance and Denial and Conditions

- A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to approving any Use Permit the Board must also make any other findings required by either the general or District regulations applicable to that particular Use Permit.
- C. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.
- D. The Board may attach such conditions to any Use Permit as it deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.050 Notice of Decision and Appeal

- A. After the Board takes an action to either approve, modify or deny an application for a Use Permit, and before the Board's next regular meeting, the Zoning Officer shall issue a Notice of Decision describing the Board's action, with its findings and applicable conditions.
- B. The Zoning Officer shall mail the notice to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before

Chapter 23B.32: Use Permits

the date of the Board action, and shall also file a copy of the notice with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

- C. Any person or entity aggrieved by a decision of the Board may appeal the decision to the Council by filing one copy of a written appeal with the City Clerk within 14 days after the mailing of the Notice of Decision.
 - 1. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.
 - 2. If a ground of the appeal is that the Board's action constituted a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall apply to appeals on the ground that the Board's decision or any condition imposed by the Board denied the applicant any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constituted a taking of property for public use without just compensation.
- D. If a timely appeal is made by the applicant, the City Clerk shall forward a copy of the written appeal to the Zoning Officer. If the appeal is made by someone other than the applicant, the Clerk shall forward a copy of the written appeal to the applicant and a copy to the Zoning Officer.
- E. Whenever a decision of the Board is inconsistent with a decision of the Landmarks Preservation Commission under Sections 3.24.200 through 3.24.240 with respect to the same project, the inconsistent decisions shall operate as a denial of that project. In such cases, if the applicant files an appeal as set forth in this section, the Council shall set the matter for hearing at the earliest feasible date after the later of the Board's action or the Landmarks Preservation Commission's action. No fee may be charged for appeals under this subsection. (Ord. 6939-NS § 2 (part), 2006; Ord. 6795-NS § 1 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.060 City Council Public Hearing

- A. The City Clerk shall provide the Council with the written appeal or appeals, set the matter for a public hearing before the Council in consultation with the Zoning Officer, and give notice of the time and place of said hearing in the same manner and to the same recipients as for the Board hearing.
- B. Before the hearing, the Zoning Officer shall forward the documents constituting the record on the matter to the Council. These shall include: copies of the Notice of Decision, indicating the Board's vote, and the findings and conditions approved by the Board; the Public Hearing notice; any and all reports made by the Zoning Officer to the Board; correspondence and letters received both by the Board or the Council submitted during the appeal process; and the Use Permit application and attachments. In the case of construction projects, the Zoning Officer shall also prepare a description in tabular form of the project as approved by the Board. The Zoning Officer shall also make a report to the Council on the Board's original action, including the issues raised at the Board's public hearing.
- C. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures.
- D. After opening the public hearing on the appeal, the Council may take one of the following actions:
 - 1. Continue the public hearing;

Chapter 23B.32: Use Permits

2. Based on the record of the Council's consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board's original action; or
 3. Remand the matter to the Board to reconsider the application, or any revisions thereto submitted after the Board's action, in which case the Council shall specify whether or not the Board shall hold a new public hearing, and which issues the Board is directed to reconsider.
- E. If the Council makes all of the findings required for the Permit before it and determines to grant the application, the City Clerk shall prepare a resolution reflecting the Council action and the Use Permit shall be issued forthwith.
- F. Except in the case of a remand to the Board, when reviewing any decision of the Board on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Board with respect to the matter on appeal. The Council may adopt the Board's decision and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council's decision.
- G. If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Board shall be deemed affirmed and the appeal deemed denied.
- H. The Council's action on the appeal shall be final. (Ord. 7350-NS § 2, 2014; Ord. 6844-NS § 2 (part), 2005; Ord. 6795-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.070 Board Action on Remand

- A. If the Council directs the Board to hold a new public hearing, the Board shall hold a new noticed public hearing on the matter and make a decision which may be appealed to the Council in the normal manner, unless otherwise directed by the Council. In such cases if an appeal is filed solely by the applicant, the fees for the public hearing, as set by Council Resolution, shall be paid by the applicant.
- B. If the Board does not act within 90 days of the date an appeal is remanded to it by the Council, then the original appeal of the Board's decision shall be placed back on the Council agenda in the same manner as a new appeal. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.080 Certification of Use Permits by City Council.

The Council may certify for its review any action of the Board granting or denying a Use Permit within 14 days from the mailing of the Notice of Decision of that action. Such certification to the Council shall stay all proceedings in the same manner as the filing of a timely appeal. Certification shall not require any statement of reasons therefor, and shall not represent opposition to or support of an application. (Ord. 7350-NS § 3, 2014; Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.090 Certification of Use Permits by City Council

Repealed by Ord. 7350-NS. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.34: Green Pathway

Chapter 23B.34

GREEN PATHWAY

Sections:

23B.34.010	Applicability
23B.34.020	Purpose
23B.34.030	Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources
23B.34.040	Voluntary Green Pathway Election--Application
23B.34.050	Requirements Applicable to All Green Pathway Projects
23B.34.060	Additional Green Pathway Requirements Applicable to Large Buildings and Hotels
23B.34.070	Development Standards for All Green Pathway Projects
23B.34.080	Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height
23B.34.090	Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height
23B.34.100	Tolling
23B.34.110	Compliance
23B.34.120	City Manager Authority to Issue Regulations

Section 23B.34.010 Applicability

This Chapter applies only to development projects in the C-DMU district that:

- A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by 14 California Code of Regulations 15064.5. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.020 Purpose

The purpose of this Chapter is to implement the "Green Pathway" provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that exceed the Green Building requirements applicable in the C-DMU district and confer extraordinary public benefits that could not otherwise be obtained, as specified in this Chapter. More specifically, this Chapter establishes standards and requirements to provide greater clarity regarding the City's expectations for projects eligible for approval under these provisions and to ensure they will be designed and developed consistent with the Downtown Area Plan. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit to the City a Request for Determination ("RFD"). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter 3.24.

- A. A property owner or authorized agent thereof shall request the Landmarks Preservation Commission ("LPC") to determine whether the subject property, as well as each adjacent property, is an historical resource under 14 California Code of Regulations 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:
 - 1. Downtown Plan and EIR (Adopted 1990);

Chapter 23B.34: Green Pathway

2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent); or
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

B. Processing of RFDs.

1. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not identified on any of the lists in Subdivision (A), the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.
3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review.
4. The LPC shall commence its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Section 3.24.140.
5. Any of the timelines specified in this Section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this Section, as they may be extended, shall constitute a decision to take no action to designate.

C. If a property that is the subject of a RFD is not designated within the time limitations set forth in this Section, Chapter 3.24 shall not apply to that property unless and until the earliest of any of the following occurs:

1. The expiration of two (2) years from the date of any final action not to designate the property; or
2. If an application under this Chapter is submitted within that period, (1) the application is withdrawn or denied; or (2) any entitlement expires, is cancelled or revoked, or for any other reason ceases to have effect.

D. Decisions by the Landmarks Preservation Commission under this Section shall be subject to appeal as set forth in Section 3.24.300, and certification as set forth in Section 3.24.190.

E. If a subject property is determined to be an historical resource as defined by 14 California Code of Regulations 15064.5, it shall not be processed as a Green Pathway Project under this Chapter. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.040 Voluntary Green Pathway Election--Application

- A. The Green Pathway authorized by this Chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.

Chapter 23B.34: Green Pathway

- B. An application for processing pursuant to the Green Pathway shall include the information otherwise required by this Title for the entitlement sought, as well as:
 - 1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved; and
 - 2. Proof that the Landmarks Preservation Commission has not taken any action under Section 23B.34.030 to designate the subject property as a structure of merit or landmark under Chapter 3.24.
- C. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of this Title.
- D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter 3.24, Landmarks Preservation Commission. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.050 Requirements Applicable to All Green Pathway Projects

All projects subject to the Green Pathway shall be subject to the following requirements:

- A. In addition to any other applicable affordable housing mitigation fee or requirement, at least twenty percent (20%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053, of the California Health and Safety Code for the life of the project. As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.
- B. The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.
- C. The applicant shall sign an agreement that no less than thirty percent (30%) of a project's construction workers shall be Berkeley residents.
 - 1. If insufficient Berkeley residents are available to fulfill the 30% local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).
 - 2. If insufficient residents are available from the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements.
 - 3. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30% local hire requirement by providing the same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subdivision.
- D. Uses shall comply with the requirements and limitations of Sections 23E.68.030 and 23E.68.060. (Ord. 7230-NS § 1 (part), 2012)

Chapter 23B.34: Green Pathway

Section 23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

In addition to the requirements of Section 23B.34.050, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:

- A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
- B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.
- C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.
- D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section 23E.68.070 and the following additional requirements:

- A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.
- B. **Street Wall Facade:** Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less:
 - 1. Smaller modulations may be incorporated within larger volumes;
 - 2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
 - a. Window openings, oriel windows, or balconies;
 - b. Awnings, canopies, or entrances;
 - c. Arcades, columns, or pilasters;
 - d. Materials and color; or
 - e. Other architectural features.

Chapter 23B.34: Green Pathway

- C. Shadow Analysis Required for Buildings With Heights Between 60 and 75 Feet: Applications shall include diagrams showing:
1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
 2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.
- D. Height Restrictions on Green Pathway Buildings: Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:
1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;
 2. Two buildings, up to 120 feet in height in the Core or Outer Core.
- E. To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

- A. Notwithstanding anything to the contrary in this Title, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this Chapter and the Downtown Design Guidelines. Such projects shall be subject to design review under subdivision B and Chapters 23E.08 and 23E.12.
- B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23B.34.030, the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.
1. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subdivisions A and B of Section 23B.34.030 to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee.
 2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.
- C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review,

Chapter 23B.34: Green Pathway

is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee's action. Design Review appeals shall be limited to design issues. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.090 Streamlined Entitlement Process For Projects Involving Buildings Over 75 Feet In Height

Notwithstanding anything to the contrary in this Title, the Zoning Adjustments Board shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under 23B.34.080 no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such projects shall receive priority status in order to meet the review milestones set forth in this Section. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.100 Tolling

Timelines under this Chapter shall be tolled during any proceedings pursuant to Chapter 3.24, relating to a Green Pathway project. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.110 Compliance

The applicable public benefit requirements of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects. (Ord. 7230-NS § 1 (part), 2012)

Section 23B.34.120 City Manager Authority to Issue Regulations

The City Manager or their designee may promulgate rules and regulations pertaining to this Chapter, including, but not limited to, setting and administering gross rents and sale prices for below-market-rate units. These rules and regulations may also specify and require guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this Chapter are secured. (Ord. 7230-NS § 1 (part), 2012)

Chapter 23B.36

MASTER USE PERMITS

Sections:

23B.36.010	Applicability of Master Use Permit Process
23B.36.020	Purposes of Master Use Permits
23B.36.030	Authorizations under the Master Use Permit Process
23B.36.040	Notice of Application
23B.36.050	Findings

Section 23B.36.010 Applicability of Master Use Permit Process

- A. The Master Use Permit process may be used for any site which is entirely or partially contained in a C, MU-LI, MM or M District, and which, at full occupancy, will be occupied by three (3) or more independently operating businesses. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.020 Purposes of Master Use Permits

The purposes of this Chapter are to:

- A. Facilitate the implementation of area plans, such as the West Berkeley Plan.
- B. Facilitate the speedy reuse of large and multi-user sites which might otherwise prove difficult to reuse.
- C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character which will benefit the occupants, the neighborhood, and the city as a whole.
- D. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner.
- E. Improve Berkeley's competitiveness in attracting and retaining businesses by allowing businesses to move onto a site quickly once overall development requirements have been established. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.030 Authorizations under the Master Use Permit Process

- A. A Master Use Permit may authorize the establishment or expansion of more than one (1) individual business and/or use on a site as of right, provided that all other applicable requirements of the Zoning Ordinance are met.
- B. The Master Use Permit shall state the number of square feet of buildings and land to be used for Industrial (Manufacturing, Wholesaling and warehousing), Office (exclusive of offices ancillary to other uses), Commercial (Retail and Personal service), Live/Work Units and Residential Uses.
- C. The number of square feet actually built in each use may vary from that set forth on the Master Use Permit by up to ten percent (10%). Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated number of square feet for any use may be authorized by an Administrative Use Permit; variations of more than twenty-five percent (25%) may be authorized by a Use Permit modification.
- D. So long as the allocation of floor area for various uses as specified in Paragraph B above remains within the limits set forth in Paragraphs B and C, lease spaces may be divided or aggregated in any manner as of right. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.36: Master Use Permits

Section 23B.36.040 Notice of Application

- A. Master Use Permits may be approved only by the Board.
- B. Public notice of application for a Master Use Permit shall be the same as for Use Permits, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.050 Findings

In order to approve a Master Use Permit, the Board must find that approval is likely to cause more rapid occupancy and use of a site for the purposes set forth in the applicable Zoning District and Area Plan, if any, than would requiring individual Use Permits. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.40: AUPS for Temporary Uses

Chapter 23B.40

AUPS FOR TEMPORARY USES

Sections:

- 23B.40.010** **Temporary Uses**
- 23B.40.020** **Notice Requirements**
- 23B.40.030** **Issuance, Findings and Conditions**
- 23B.40.040** **Appeals of Zoning Officer Decisions**

Section 23B.40.010 **Temporary Uses**

- A. The Zoning Officer may issue an Administrative Use Permit (AUP) for a Temporary Use, building or structure as set forth in this Chapter.
- B. An AUP is not required for a temporary Retail Use when the sales are on the same property with an established commercial business holding a valid City business license, except when in conflict with a Permit.
- C. No seasonal product sales activity may exceed a period of forty-five (45) days or may be established in any R-District. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.020 **Notice Requirements**

All Permits for Temporary Uses or structures shall be subject to the same notice requirements as other AUPs, except that the notice time period shall be for fourteen (14) days. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.030 **Issuance, Findings and Conditions**

- A. The Zoning Officer may issue an AUP for a Temporary Use, building or structure upon finding that the establishment, maintenance or operation of the Temporary Use, or the construction of a temporary structure, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. In determining whether to make this finding, the Zoning Officer shall take into consideration whether the temporary nature of the use or structure will render it not detrimental.
- B. Conditions may be attached to any AUP for a Temporary Use or structure as are deemed necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety, and welfare. In addition, the AUP shall specify the time period described in the application, as modified, for which the Temporary Use or structure is authorized, with a specified ending date.
- C. No extensions of time are allowed unless approved by the Zoning Officer. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.040 **Appeals of Zoning Officer Decisions**

Any party aggrieved by the decision of the Zoning Officer to approve, modify or deny an AUP for a Temporary Use or structure, or by any condition attached thereto, may appeal the decision to the Board, in the same manner as any other AUP, except that Permits for seasonal product sales of pumpkins and Christmas trees, including the use of a temporary structure for an office shall be exempt from appeals. Notice of issuance of a Permit for seasonal product sales shall be posted for fourteen (14) days, after which the AUP will become effective immediately. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.44: Variances

Chapter 23B.44

VARIANCES

Sections:

23B.44.010	Variances
23B.44.020	Application and Hearing Process
23B.44.030	Findings for Issuance and Denial
23B.44.040	Notice of Decision, Appeal, Certification by Council
23B.44.050	Exception where Applicant Establishes Inapplicability or Unconstitutionality of General Requirements

Section 23B.44.010 Variances

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property; the height of buildings; the yard setbacks of buildings the percentage of lot coverage; the lot area requirements; or the off-street parking requirements of this Ordinance; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings; the percentage of lot coverage; or the non-residential off-street parking space requirements of this Ordinance when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses. (Ord. 7751-NS § 2, 2021; Ord. 6954-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.020 Application and Hearing Process

- A. Applications and fees for Variances shall be submitted in the same manner as for Use Permits.
- B. Notice of applications for Variances shall be given in the same manner as for Use Permits.
- C. Hearings on Variances shall be scheduled and held, and actions shall be taken, in the same manner as for Use Permits.
- D. Subject to the findings required for issuance, the Board has the same authority with respect to the approval, denial, modification and conditioning of Variances as it does with respect to Use Permits. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.030 Findings for Issuance and Denial

- A. After the Board has conducted a public hearing, it shall act on the application. The Board may approve a Variance application, either as submitted or modified, only if it makes all of the following findings:
 - 1. There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District;
 - 2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner;
 - 3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the

Chapter 23B.44: Variances

public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;

4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.
- B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.040 Notice of Decision, Appeal, Certification by Council

Notices of decisions on applications for Variances shall be given, and appeals thereof shall be taken, in the same manner and subject to the same limitations as for Use Permits. The Council may certify a Board decision concerning a Variance in the same manner and to the same effect as a decision concerning a Use Permit. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.050 Exception where Applicant Establishes Inapplicability or Unconstitutionality of General Requirements

- A. The Board may waive or limit the application of any requirement of this Ordinance to a particular development project if it finds that such requirement would result in a deprivation of the applicant's constitutional rights.
- B. The burden of establishing that this exemption applies is on the applicant. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.48: Modification of Development Standards

Chapter 23B.48

MODIFICATION OF DEVELOPMENT STANDARDS

Sections:

23B.48.010	Applicability
23B.48.020	Purposes
23B.48.030	Authorizations to Modify Use Locations and/or Development Standards
23B.48.040	Findings

Section 23B.48.010 Applicability

The Board may consider an application under this Chapter to modify the Development Standards applicable to a site, if:

- A. The majority of the site is contained in a C-W, MU-LI, MM or M District.
- B. The applicant is requesting approval of development standards which are different from those otherwise applicable to the location; and/or the applicant is requesting the right to build the project in phases.
- C. As of the effective date of this Chapter, the site is at least five (5) contiguous acres in land area in the City under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or is less than five (5) acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), and/or mainline railroad tracks and/or the borders of the City.
- D. The application does not propose any modification that would result in a violation of any restriction set forth in Section 23E.80.045. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.48.020 Purposes

The purposes of this Chapter are to:

- A. Facilitate the implementation of the West Berkeley Plan.
- B. Facilitate the speedy reuse of the small number of large sites which have proven difficult to reuse.
- C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character which will benefit the occupants, the neighborhood and the City as a whole; and
- D. Allow modifications of standards when such modifications serve the overall purposes of their districts and the West Berkeley Plan on large, complex sites and where the design of the project is compatible with the design and character of the surrounding area. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.48.030 Authorizations to Modify Use Locations and/or Development Standards

- A. Modification of Development Standards may authorize relocation of uses that are generally limited as to location within a building, location on a site or location within a district to alternative locations in the building, on the site or in the district, as applicable, where they would otherwise not be permitted.
- B. A Modification of Development Standards may authorize modifications to otherwise applicable development standards including but not limited to, height, yard requirements, open space requirements and parking standards. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.48: Modification of Development Standards

Section 23B.48.040 Findings

- A. In order to approve a Modification of Development Standards, the Board must make the finding required by Section 23B.32.040, all findings required for a Use Permit in the District in which the site is predominantly located, as well as the following findings:
1. The site is eligible for consideration for a Modification of Development Standards under Section 23B.48.010;
 2. The project is likely to advance the purposes of the West Berkeley Plan and this Chapter;
 3. The project supports the attraction and/or retention of the types of businesses reflected in the purposes of the applicable District.
- B. If the application seeks modifications to otherwise applicable development standards or limitations on the locations of uses, the Board must find that the modifications are necessary and appropriate for the development of the proposed project. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.52: Reasonable Accommodation

Chapter 23B.52

REASONABLE ACCOMMODATION

Sections:

23B.52.010	Purpose
23B.52.020	Application
23B.52.030	Information Required
23B.52.040	Process
23B.52.050	Action on Application--Criteria--Findings--Appeal
23B.52.060	Recission of Grants of Reasonable Accommodation
23B.52.070	Fees

Section 23B.52.010 Purpose

It is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. The City also recognizes the importance of sustaining and enhancing neighborhoods. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The purpose of this chapter is to establish a process for making and acting upon requests for reasonable accommodation. (Ord. 6668-NS § 1, 2001)

Section 23B.52.020 Application

- A. Any person who requests reasonable accommodation in the form of modification in the application of a zoning or subdivision law which may act as a barrier to fair housing opportunities due to the disability of existing or proposed residents, may do so on a form prescribed for that purpose by the City.
- B. If the project for which the request is being made also requires some other approval, permit or entitlement under this Title or Title 21 of this code, the applicant shall file the request together with the application for such approval, permit or entitlement.
- C. An application under this chapter may seek an accommodation that is also available under other provisions that allow modifications of otherwise applicable standards in this title or Title 21 of this code. In such cases, an accommodation under this chapter shall be in lieu of any approval, permit or entitlement that would otherwise be required.
- D. An application under this chapter may also seek an accommodation that is not also available under any other provision of this title or Title 21 of this code. (Ord. 6668-NS § 1, 2001)

Section 23B.52.030 Information Required

In addition to any other information that is required under this title or Title 21, the applicant shall provide the following information:

- A. Applicant's name, address and telephone number;
- B. Address of the property for which the request is being made;
- C. The current actual use of the property;
- D. The ordinance provision for which modification is requested;

Chapter 23B.52: Reasonable Accommodation

- E. A description of why the modification is reasonably necessary to make the specific housing available to the person(s), including information establishing that the applicant is disabled under applicable laws;
- F. Such other relevant and permissible information as may be requested by the Director of Planning & Development or their designee. (Ord. 6668-NS § 1, 2001)

Section 23B.52.040 Process

- A. If an application under this chapter is filed with an 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 same manner as such other application, and shall be subject to all of the same procedures. If an application under this chapter is filed with more than one other application under this title or Title 21, the Zoning Officer shall determine the appropriate procedure to be used.
- B. 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 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. (Ord. 6668-NS § 1, 2001)

Section 23B.52.050 Action on Application--Criteria--Findings--Appeal

- A. An application under this chapter may be approved, approved subject to conditions, or denied.
- B. The following factors shall be considered in making a determination regarding the reasonableness of any application under this chapter:
 - 1. Need for the requested modification, including alternatives that may provide an equivalent level of benefit;
 - 2. Physical attributes of and any proposed changes to the subject property and structures;
 - 3. Whether the requested modification would impose an undue financial or administrative burden on the City;
 - 4. Whether the requested modification would constitute a fundamental alteration of the City's zoning or subdivision program;
 - 5. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood;
 - 6. Any other factor that may have a bearing on the request.
- C. Any decision on an application under this chapter shall be supported by written findings and conclusions addressing the criteria set forth in this subdivision, and shall be subject to appeal pursuant to the procedures applicable under the preceding subdivision. (Ord. 6668-NS § 1, 2001)

Chapter 23B.52: Reasonable Accommodation

Section 23B.52.060 Rescission of Grants of Reasonable Accommodation

Any approval or conditional approval of an application under this chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances. (Ord. 6668-NS § 1, 2001)

Section 23B.52.070 Fees

There shall be no fee for an application under this chapter. (Ord. 6668-NS § 1, 2001)

Chapter 23B.56: Conditions Applicable to All Permits

Chapter 23B.56

CONDITIONS APPLICABLE TO ALL PERMITS

Sections:

23B.56.010	Uses Approved Deemed to Exclude Other Uses
23B.56.020	Modification of Permits
23B.56.030	Plans and Representations Become Conditions
23B.56.040	Subject to All City and Other Regulations
23B.56.050	Required Guarantees
23B.56.060	Periodic Review and Reporting
23B.56.070	Limited Duration of Time
23B.56.080	Exercised Permit for Use Survives Vacancy of Property
23B.56.090	Resubmittal of Same Use Permit Application
23B.56.100	Exercise and Lapse of Permits

Section 23B.56.010 Uses Approved Deemed to Exclude Other Uses

- A. Any approval permits only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Unless otherwise specified therein, any approval terminates all other uses at the location subject to the approval. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.020 Modification of Permits

- A. No change in the use or structure for which a Permit has been issued is permitted unless the Permit is modified by the Zoning Officer or Board. Changes which require modification include, but are not limited to, the following:
 - 1. Expanding the floor or land area devoted to the approved use or uses;
 - 2. Expanding a customer service area and/or increase in the number of customer seats;
 - 3. Changing a building's occupant load rating under the City's Building Code so that it is classified in a different category with a higher occupancy rating;
 - 4. Increasing the number of employees, beds, rooms or entrances;
 - 5. Establishing a new product line, service, function or activity so as to substantially change the character of the use;
 - 6. Increasing the volume of production, storage or capacity of any business manufacturing process or activity;
 - 7. Changing the type of alcohol sales and/or service; and
 - 8. Any other change that expands, intensifies or otherwise substantially changes the use or building.
- B. AUPs may be modified by the Zoning Officer but all other Permits may be modified only by the Board.
- C. The Board may modify Permits which have not been exercised without a public hearing or may set the matter for a public hearing, in which case the procedures for Use Permits will apply.

Chapter 23B.56: Conditions Applicable to All Permits

- D. Permits for construction of a building may not be modified after construction is complete. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.030 Plans and Representations Become Conditions

Unless otherwise specified or required by the Zoning Officer, Board or Council, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or submitted during the approval process shall be deemed conditions of approval. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.040 Subject to All City and Other Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.050 Required Guarantees

Any approval may be subject to requirements that the permittee guarantees, warranties or insures that the Permit's plans and/or conditions shall in all respects be complied with. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.060 Periodic Review and Reporting

All approvals may be subject to periodic review to determine compliance with the requirements thereof and conditions attached thereto. If a condition specifies that activities or uses allowed under the Use Permit are subject to periodic reporting, monitoring or assessments, it shall be the responsibility of the permittee, the property owner or successor property owners to comply with such conditions. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.070 Limited Duration of Time

Any approval may be subject to time limits. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.080 Exercised Permit for Use Survives Vacancy of Property

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.090 Resubmittal of Same Use Permit Application

No application for any approval which has been denied may be resubmitted by the applicant for a period of one (1) year from such denial except on the grounds of new evidence or substantially changed conditions, or if the application was denied without prejudice. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.100 Exercise and Lapse of Permits

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

Chapter 23B.56: Conditions Applicable to All Permits

- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one (1) year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has applied for a building permit.
- D. Permits may be declared lapsed by the Zoning Officer upon fourteen (14) days written notice to the permittee. Any determination by the Zoning Officer that a permit has lapsed may be appealed to the Board in the same manner as an action by the Zoning Officer on an AUP. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.60: Compliance and Revocation

Chapter 23B.60

COMPLIANCE AND REVOCATION

Sections:

23B.60.010	Revocation and Modification of Permits
23B.60.020	Findings for Revocation/Modification of Permit
23B.60.030	Proceedings for Initiation of Revocation/Modification -- Hearing Required for Recommendation to Revoke or Modify
23B.60.040	Recommendation
23B.60.050	Council Proceedings -- Notice of Decision
23B.60.060	Remedies
23B.60.070	Recovery of Costs -- Fees

Section 23B.60.010 Revocation and Modification of Permits

- A. The Council may revoke or modify any Permit if it makes the findings required by this Chapter.
- B. Permits for Temporary Uses may be revoked for non-compliance with any conditions designated therein, and the Zoning Officer may issue an immediate cease and desist order.
- C. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy. (Ord. 6972-NS § 1 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.020 Findings for Revocation/Modification of Permit

If the Council makes any of the findings set forth in this Section, it may revoke or modify the permit.

- A. The holder of the permit has failed to comply with at least one or more of the conditions set forth therein.
- B. The use, structure or building permitted has been substantially expanded or changed in character beyond that set forth in the permit.
- C. The property has been vacant for one (1) year and the applicant has not demonstrated a good faith intent to re-occupy the property with the use specified in the approved Permit. In such cases, the burden shall be on the permittee to establish their good faith intent, and the Board may require the applicant to produce documentation to substantiate that good faith intent. (Ord. 6972-NS § 1 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.030 Proceedings for Initiation of Revocation/Modification -- Hearing Required for Recommendation to Revoke or Modify

- A. Proceedings under this chapter to revoke or modify Permits may be initiated by a referral by the Zoning Officer, Board or Council. Such referral shall identify the Permit being considered, identify the property to which the permit applies, and set forth the reason or reasons for the proposed revocation or modification. A referral by the Board shall fix a time and place for a public hearing on the proposed revocation. The Zoning Officer shall fix a time and place for a public hearing on all other referrals.
- B. Upon such referral, the Zoning Officer shall give notice of a public hearing before the Board as set forth in Section 23B.32.020 and shall also mail, within the prescribed time period, the notice of the hearing to the current holder of the Permit, the owner of the subject property, the person who requested an initiation of revocation proceedings, and any other person who has filed a written request with the Zoning Officer for such notice.

Chapter 23B.60: Compliance and Revocation

- C. The public hearing before the Board shall be conducted as set forth in Section 23B.32.030. (Ord. 6972-NS § 1 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.040 Recommendation

Upon conclusion of the hearing, the Board shall make a written recommendation to the Council whether to revoke or modify the Permit on the grounds specified in section 23B.60.020, based on the evidence, testimony, and facts presented to the Board at the hearing. Such recommendation shall include written findings in support thereof and shall be issued within thirty-five (35) days after the conclusion of the hearing. (Ord. 6972-NS § 1 (part), 2007)

Section 23B.60.050 Council Proceedings -- Notice of Decision

- A. If the Board recommends that the Council revoke or modify the Permit, that recommendation shall be set for public hearing before the Council within 60 days following its issuance, unless all person(s) subject to the Board' s recommendation consent to it in writing within 10 days after it is issued, in which case it shall be deemed a final decision by the City to revoke the Use Permit or to impose additional conditions thereon, as the case may be.
- B. A record of the Board's proceedings in all matters under this chapter, including its recommendation, if any, shall be filed with the City Clerk within 14 days following the date the Board either issues or declines to issue a recommendation, and the City Clerk shall present said record to the City Council at its next regular meeting at which it is practicable to do so. Notwithstanding subdivision A of this section, the Council may set the matter for hearing within 30 days thereafter.
- C. Notice and conduct of hearings before the Council shall be as set forth in section 23B.60.030.
- D. After hearing, the Council may find that the Permit should be revoked or modified on the bases set forth in section 23B.60.020 and impose any remedy provided for in this Chapter, or take no action.
- E. If the Council revokes or modifies a Permit, the City Clerk shall issue a Notice of Decision describing the Council' s action, with its findings. The City Clerk shall mail the notice to the permit holder, the owner of the subject property, the person who requested proceedings under this chapter, and any person who requests such a notification by filing a written request therefore with the Zoning Officer or the City Clerk, and shall file a copy of the Notice of Decision with the Zoning Officer. (Ord. 6972-NS § 1 (part), 2007)

Section 23B.60.060 Remedies

Upon making any of the findings set forth in Section 23B.60.020, the Council may impose any remedy available at law or in equity which shall include, but is not limited to, any of the following or combination thereof: enjoining the use in whole or in part; imposing reasonable conditions upon any continued operation of the use, including those uses which constitute existing non-conforming uses; requiring continued compliance with any conditions so imposed; requiring the use to guarantee that such conditions shall in all respects be complied with; and, upon a failure of the user to comply with any conditions so imposed, imposing additional conditions or enjoining the use in whole or in part. (Ord. 6972-NS § 1 (part), 2007; Ord. 6578-NS § 5, 2000; Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.070 Recovery of Costs -- Fees

- A. The City may recover the costs of any corrective action under this chapter that is effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or their designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.

Chapter 23B.60: Compliance and Revocation

- B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Council, takes any action authorized by Section 23B.60.060, in which case payment of costs charged under this paragraph shall be made a condition of continued operation of said building, structure or use.
- C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of costs under paragraph A above. (Ord. 6972-NS § 1 (part), 2007)

Chapter 23B.64: Abatement of Nuisances

Chapter 23B.64

ABATEMENT OF NUISANCES

Sections:

23B.64.010	Nuisances Prohibited
23B.64.020	Nuisances Defined
23B.64.030	Proceedings for Initiation of Abatement
23B.64.040	Recommendation
23B.64.050	Council Proceedings -- Notice of Decision
23B.64.060	Remedies
23B.64.070	Recovery of Costs - Fees

Section 23B.64.010 Nuisances Prohibited

- A. No land, building or premises may be used, operated or maintained, and no building or structure may be set up, erected, constructed, altered, enlarged, converted, moved or maintained, in such a manner as to create or result in a public nuisance as defined in this chapter.
- B. The City Attorney may, at their discretion or upon order of the Council, immediately commence action or proceedings for the abatement and removal and enjoinder of violations in the manner provided by law, and may take such other steps and may apply to such courts as may have jurisdiction to grant such relief as will abate and remove such use, or building or structure, and may seek to restrain and enjoin any person, firm or corporation from such use of any property, building or structure, or from setting up, erecting, building, maintaining or demolishing any such building or structure contrary to the provisions of this chapter.
- C. The procedures and remedies provided for herein shall be cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.
- D. It shall be the duty of the City Manager, or their designee, to enforce the provisions of this chapter pertaining to the establishment of any use or the erection, construction, reconstruction, demolition, moving, conversion, alteration or addition to any building or structure.
- E. All departments, officials and employees of the City vested with the duty or authority to issue permits shall conform to the provisions of this chapter and shall issue no permit or license for uses, buildings or purposes in conflict with this chapter; and any such permit or any business license issued in conflict with the provisions of this chapter shall be null and void. Nothing in this section is intended to create a mandatory duty under Government Code Section 815.6.
- F. Any violation of Title 23 of this code is a misdemeanor, but may be cited or charged, at the election of the enforcing officer or City Attorney, as an infraction. In all other respects, the provisions of Chapter 1.20 shall apply.
- G. If compliance is not had with an order of the Zoning Officer to correct violations of this chapter within the time specified therein, the Zoning Officer may file in the Office of the County Recorder a certified statement describing the property and certifying that:
 1. The property and/or structure is in violation of this chapter; and
 2. The owner has been so notified.

The notice shall specifically describe the violations and a proof of service shall also be recorded with the Notice and Order. Whenever the corrections ordered shall thereafter have been completed, the Zoning Officer shall file a new certified statement with the county recorder certifying that all required corrections have been made so that

Chapter 23B.64: Abatement of Nuisances

the property and/or structure is no longer in violation of this chapter. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 1, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.020 Nuisances Defined

Any use, event, structure or building, whether non-conforming or otherwise, which meets any of the nuisance criteria set forth in this section is a public nuisance subject to abatement as set forth herein.

- A. Maintenance or operation, by omission or commission in such a way as to result in or facilitate any of the following activities, each of which the City hereby declares to be a public nuisance: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests or any other activity declared by the City to be a public nuisance;
- B. Violation of any provision of this chapter or any other City, state or federal regulation, ordinance or statute; or
- C. Any use or event, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six (6) Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three (3) Berkeley Police Department patrol officers at any other time, to quell such disturbance. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 2, 2000: 6478-NS § 4 (part), 1999)

Section 23B.64.030 Proceedings for Initiation of Abatement

- A. Proceedings under this chapter to terminate, modify or condition (hereinafter abate or if context requires, abatement) any use, structure or building may be initiated by a referral by the Zoning Officer, Board or Council. Such referral shall identify the use, structure or building being considered, identify the property involved, and set forth the reason or reasons for the proposed abatement. A referral by the Board shall fix a time and place for a public hearing on the proposed abatement. The Zoning Officer shall fix a time and place for a public hearing on all other referrals.
- B. Upon such referral, the Zoning Officer shall give notice of a public hearing before the Board as set forth in Section 23B.32.020, and shall also mail, within the prescribed time period, the notice of the hearing to the person or persons whose use, structure or building is the subject of the proceedings, the owner of the subject property, any person who requested initiation of the proceedings, and any other person who has filed a written request with the Zoning Officer for such notice.
- C. The public hearing before the Board shall be conducted as set forth in Section 23B.32.030. (Ord. 6972-NS § 2 (part), 2007:Ord. 6578-NS § 4, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.040 Recommendation

Upon conclusion of the hearing, the Board shall make a written recommendation to the Council as to whether a nuisance exists and, if so, the appropriate remedy, based on the evidence, testimony, and facts presented to the Board at the hearing. Such recommendation shall include written findings in support thereof and shall be issued within thirty-five (35) days after the conclusion of the hearing. (Ord. 6972-NS § 2 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.050 Council Proceedings -- Notice of Decision

- A. If the Board recommends that the Council make a determination of nuisance, that recommendation shall be set for public hearing before the Council within 60 days following its issuance unless all person(s) subject to the Board's recommendation consent to it in writing within 10 days after it is issued, in which case it shall be

Chapter 23B.64: Abatement of Nuisances

deemed a final decision by the City to terminate the use or structure, or impose conditions thereon, as the case may be.

- B. A record of the Board's proceedings in all matters under this chapter, including its recommendation, if any, shall be filed with the City Clerk within 14 days following the date the Board either issues or declines to issue a recommendation, and the City Clerk shall present said record to the City Council at its next regular meeting at which it is practicable to do so. Notwithstanding subdivision A of this section, the Council may set the matter for hearing within 30 days thereafter.
- C. Notice and conduct of hearings before the Council shall be as set forth in section 23B.60.030.
- D. After hearing, the Council may find, that the use, structure or building constitutes a nuisance and impose any remedy provided for in this Chapter, or take no action.
- E. If the Council makes a determination of nuisance, the City Clerk shall issue a Notice of Decision describing the Council's action, with its findings. The City Clerk shall mail the notice to the permit holder, the owner of the subject property, the person who requested proceedings under this chapter, and any person who requests such a notification by filing a written request therefore with the Zoning Officer or the City Clerk, and shall file a copy of the Notice of Decision with the Zoning Officer. (Ord. 6997-NS, 09/11/07: Ord. 6972-NS § 2 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.060 Remedies

- A. Upon a finding of nuisance pursuant to this section, the Board or Council may impose any remedy available at law or in equity which shall include, but is not limited to, any of the following or combination thereof: enjoining the use in whole or in part; imposing reasonable conditions upon any continued operation of the use, including those uses which constitute existing non-conforming uses; requiring continued compliance with any conditions so imposed; requiring the user to guarantee that such conditions shall in all respects be complied with; and, upon a failure of the user to comply with any conditions so imposed, imposing additional conditions or enjoining the use in whole or in part.
- B. In addition or as an alternative to any other remedy, in the case of a public nuisance as defined in Section 23B.64.020.C, the Board or Council may impose an administrative penalty of up to \$10,000 jointly and severally on the person(s) responsible for the nuisance and/or the property owner, and/or may impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessitated by future such public nuisances. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 3, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.070 Recovery of Costs -- Fees

- A. The City may recover the costs of any nuisance abatement effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or their designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.
- B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Board, or, on appeal, the Council, takes any action authorized by Section 23B.64.060, in which case payment of costs

Chapter 23B.64: Abatement of Nuisances

charged under this paragraph shall be made a condition of continued operation of said building, structure or use.

- C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of abatement costs under paragraph A above. (Ord. 6972-NS § 2 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Chapter 23B.68: Private Right of Action

Chapter 23B.68

PRIVATE RIGHT OF ACTION

Sections:

23B.68.010 Private Right of Action

Section 23B.68.010 Private Right of Action

- A. Any resident of the City may bring a private action for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this Title.
- B. No action may be brought under this Section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.
- C. In any action prosecuted under this Section a prevailing plaintiff may recover reasonable attorneys' fees. (Ord. 7023-NS § 2, 3/25/08)

Sub-Title 23C

GENERAL PROVISIONS APPLICABLE IN ALL DISTRICTS

Chapters:

23C.04	CONFORMING AND NON-CONFORMING USES, BUILDINGS AND LOTS
23C.06	BED AND BREAKFAST ESTABLISHMENTS IN RESIDENTIAL DISTRICTS
23C.08	DEMOLITION AND DWELLING UNIT CONTROLS
23C.10	EMERGENCY SHELTER ZONING
23C.12	INCLUSIONARY HOUSING REQUIREMENTS*
23C.14	DENSITY BONUS
23C.16	HOME OCCUPATIONS
23C.17	WIRELESS TELECOMMUNICATION FACILITIES
23C.18	TRANSPORTATION DEMAND MANAGEMENT
23C.19	OFF-STREET PARKING MAXIMUMS FOR RESIDENTIAL DEVELOPMENT
23C.20	EXEMPTIONS
23C.22	SHORT-TERM RENTALS
23C.23	PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS
23C.24	ACCESSORY DWELLING UNITS
23C.25	CANNABIS USES
23C.26	URBAN AGRICULTURE

Chapter 23C.04: Conforming and Non-conforming Uses, Buildings and Lots

Chapter 23C.04

CONFORMING AND NON-CONFORMING USES, BUILDINGS AND LOTS

Sections:

23C.04.010	Establishment of Conforming Uses, Buildings and Structures
23C.04.020	Establishment of Lawful Non-conforming Uses, Buildings, Structures and Lots
23C.04.030	Abandonment of Lawful Non-Conforming Uses, Buildings and Structures
23C.04.040	Change of Lawful Non-conforming Use, Building or Structure to Conforming Use, Building or Structure
23C.04.050	Continuance of Non-conforming Buildings and Structures
23C.04.060	Changes of Non-conforming Uses
23C.04.070	Expansions of Non-conforming Buildings and Structures
23C.04.075	Exemptions for Public Safety Structural Alterations to Conforming and Non-conforming Buildings
23C.04.076	Exemptions for Existing Public Libraries
23C.04.080	Conversions of Non-conforming Buildings and Structures
23C.04.090	Destruction and Re-construction of Non-conforming Buildings
23C.04.100	Rebuilding after Involuntary Destruction of Structure or Portion Thereof

Section 23C.04.010 Establishment of Conforming Uses, Buildings and Structures

In order for a use or structure to comply with this Ordinance it must be established or constructed with the prior approval of, or legalized after the fact by, either a Zoning Certificate or all required Permits. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.020 Establishment of Lawful Non-conforming Uses, Buildings, Structures and Lots

- A. Any Use, structure or building which is a lawful Non-conforming Use, structure or building shall be deemed to be in compliance with this Ordinance if it has remained in continuous existence. The non-conformity may result from any inconsistency with the requirements of this Ordinance, whether substantive or procedural, including, but not limited to, the inconsistency of the Use, building or structure or aspects thereof, with any requirement of this Ordinance or the lack of a Zoning Certificate or Use Permit.
- B. The following lots which have areas less than the minimum lot size required by this Ordinance shall be considered lawful non-conforming lots. Such lots may be used as building sites subject to all other requirements of this Ordinance, except that if the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958, is less than that required for one lot under this Ordinance, such lots may be used as only one building site.
1. Any lot described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership prior to November 30, 1950, or which was shown as a lot on any recorded subdivision map, filed prior to November 30, 1950; or
 2. Any lot in the Environmental Safety Residential (ES-R) District which was described in the official records on file in the office of the County Recorder of Alameda County as a lot of record under one ownership or as a lot on any recorded subdivision map filed prior to February 13, 1975. (Ord. 6856-NS § 1 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.030 Abandonment of Lawful Non-Conforming Uses, Buildings and Structures

Subject to the following exceptions, a lawful non-conforming use may be declared to be terminated if the Board finds that the use not been occurring for at least one year and that the most recent prior user has not

Chapter 23C.04: Conforming and Non-conforming Uses, Buildings and Lots

demonstrated a good-faith intent to resume it. The Board may require any person claiming that the use should not be declared terminated to produce documentation to substantiate such good faith intent to resume the use.

- A. No lawful Residential Use can lapse, regardless of the length of time of the non-use.
- B. Lawful non-conforming full or quick service restaurants with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:
 - 1. Such fixed structures, equipment or facilities are removed; or
 - 2. Other uses could not be established without major removal of or extensive remodeling or replacement of, structures associated with the previous established use.
- C. Lawful non-conforming off-sale retail alcohol beverage sales uses may be declared terminated by the board after a public hearing under this section in the event of a closure of more than 90 days except when such closure is for the purposes of:
 - 1. Repair that does not change the nature of the license premises or increase the square footage of the business used for the sale of alcoholic beverages; or
 - 2. Restoration of premises rendered totally or partially unusable by an act of nature, fire, accident, or other involuntary cause if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages. (Ord. 7023-NS § 1, 3/25/08; Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.040 Change of Lawful Non-conforming Use, Building or Structure to Conforming Use, Building or Structure

Any use, building or structure existing on the effective date of this Ordinance which is non-conforming solely by reason of the absence of a Zoning Certificate or a Use Permit may be changed to a conforming use, building or structure by issuance of a Zoning Certificate or any required applicable Use Permit, as the case may be. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.050 Continuance of Non-conforming Buildings and Structures

A lawful non-conforming structure may be maintained and repaired, as long as such maintenance or repair does not result in a change of the use thereof. Replacement of portions of a non-conforming structure is allowed provided that the removed portions were lawfully constructed and are replaced to the same size, height, extent and configuration as previously existed. Non-conforming portions of non-conforming structures may be removed by right if such removal does not constitute demolition (For buildings and structures subject to the Landmarks Preservation Ordinance, the regulations under BMC Chapter 3.24 shall apply). (Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.060 Changes of Non-conforming Uses

- A. An AUP is required for any change in a lawful Non-conforming Use, unless the new Use:
 - 1. Is allowed by right;
 - 2. Complies with any floor area limits or thresholds;
 - 3. Conforms to all other applicable requirements of this Ordinance including the Use standards set forth in Chapter 23E.16 and excluding any parking requirements; and
 - 4. Is in a building which is conforming.

Chapter 23C.04: Conforming and Non-conforming Uses, Buildings and Lots

- B. No lawful non-conforming use may be substantially expanded or changed in character without the issuance of a Use Permit. Substantial expansions and changes include all of those set forth in Section 23B.56.020.A, as well as extending the non-conforming use into an existing portion of a building which has not been previously occupied by that non-conforming use. (Ord. 6856-NS § 2 (part), 2005: Ord. 6676-NS § 1, 2002: Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.070 Expansions of Non-conforming Buildings and Structures

- A. Additions to and/or enlargements of lawful non-conforming structures are allowed to the extent such addition/enlargement complies with all applicable laws, if the existing use of the property is conforming.
- B. Additions or enlargements which vertically and/or horizontally extend a non-conforming yard and/or horizontally extend a non-conforming height, or an alteration of a portion of a building which encroaches into a non-conforming yard or which extends above the permitted height, may be authorized by an AUP if the existing use of the property is conforming and if the addition/enlargement would not:
 - 1. Reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or
 - 2. Exceed the maximum or calculated height limits.
- C. Additions to and/or enlargements of lawful non-conforming structures that are non-conforming by reason of violation of the maximum allowable lot coverage are not permitted, unless the addition/enlargement does not increase coverage or exceed the height limit. If the addition/enlargement does not increase coverage or exceed the height limit, it is permitted subject to issuance of a Use Permit.
- D. Enlargements of lawful non-conforming structures that are non-conforming by reason of violation of the maximum allowable FAR are not permitted, unless the enlargement does not increase the FAR or exceed the height limit. If the enlargement does not increase the FAR or exceed the height limit, it is permitted subject to issuance of a Use Permit.
- E. Additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are not permitted, unless the addition/enlargement does not increase residential density or exceed the height limit. If the addition/enlargement does not increase the residential density or exceed the height limit, it is permitted subject to issuance of a Use Permit.
- F. Additions to and/or enlargements of a lawful non-conforming building or structure located on a property that also contains a lawful non-conforming use, whether or not that use occupies the subject building or structure, are subject to a Use Permit. (Ord. 6718-NS § 1, 2002: Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.075 Exemptions for Public Safety Structural Alterations to Conforming and Non-conforming Buildings

- A. Public safety structural alterations that vertically and/or horizontally extend a non-conforming yard and/or horizontally extend a non-conforming height, and alterations of a portion of a building that encroaches into a non-conforming yard or extends above the permitted height, are permitted by right to the extent necessary, as determined by the Zoning Officer.
- B. Public safety structural alterations that vertically extend above the residential district height limit for residential additions are permitted by right to the extent necessary, as determined by the Zoning Officer.
- C. Public safety structural alterations, whether to conforming or lawful non-conforming buildings, which exceed the maximum allowable lot coverage are permitted by right to the extent necessary, as determined by the Zoning Officer.

Chapter 23C.04: Conforming and Non-conforming Uses, Buildings and Lots

- D. Public safety structural alterations to lawful non-conforming buildings that are non-conforming by reason of residential density are permitted by right to the extent necessary, as determined by the Zoning Officer.
- E. Public safety structural alterations to lawful non-conforming buildings located on a property that also contains a lawful non-conforming use, whether or not that use occupies the subject building or structure, are permitted by right to the extent necessary, as determined by the Zoning Officer.
- F. Public safety structural alterations to a conforming or lawful non-conforming building or structure that reduce, relocate, or remove required parking spaces are permitted as set forth below:
 - 1. Parking spaces may be converted to substandard compact spaces with if approved by the Traffic Engineer.
 - 2. Parking spaces may be relocated into a yard or other location by right to the extent necessary, as determined by the Zoning Officer, if:
 - a. The requirements of Section 23C.04.075.F.1 cannot be met;
 - b. Screening of the parking is provided as required in BMC Chapter 23D.12, 23E.28 or by the district;
 - c. Landscaped areas adjacent to parking are provided as required in BMC Chapter 23D.12, 23E.28 or by the district; and
 - d. The parking relocation is approved by the Traffic Engineer.
 - 3. Required parking may be removed if the Traffic Engineer determines that the requirements of Sections 23C.04.075.F.1 and 23C.04.075.F.2 cannot be met.
- G. Any aesthetic improvement or screening that the Zoning Officer determines is associated with a public safety structural alteration shall be treated as part of the public safety structural alteration. (Ord. 7019-NS § 1, 2/26/08)

Section 23C.04.076 Exemptions for Existing Public Libraries

Notwithstanding any other provision of this title, any conforming or lawful nonconforming public library existing as of May 1, 2010, may be (1) changed, (2) expanded, or (3) replaced by a new public library on the same site following demolition, subject to issuance of a Use Permit, unless such change, expansion or new library is otherwise allowed by this title. The Board may modify any requirement of this title applicable to such change, expansion or new library as part of the Use Permit. (Ord. 7170-NS § 1, 2011)

Section 23C.04.080 Conversions of Non-conforming Buildings and Structures

- A. Conversion of structures which are lawfully used for non-residential uses and are non-conforming by reason of non-compliance with yard, height or maximum lot coverage standards may be authorized by an AUP if the existing use of the property is conforming. Conversion of buildings used for non-residential uses which are non-conforming by reason of their non-compliance with the applicable FAR may be authorized by a Use Permit if the existing use of the property is conforming. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.04: Conforming and Non-conforming Uses, Buildings and Lots

Section 23C.04.090 Destruction and Re-construction of Non-conforming Buildings

- A. If a lawful non-conforming structure is damaged or destroyed to the extent of more than 50% of its appraised value, the land and building shall be fully subject to this Ordinance, as if there had been no lawful non-conforming structure. The determination of the appraised value shall be the higher of:
1. The records of the Assessor of the County of Alameda for the fiscal year during which such destruction occurred; or
 2. An appraisal performed by a certified appraiser.
- B. However, the Board may approve a Use Permit for the structure to be rebuilt to the same size, extent and configuration as previously existed, as long as the previous use is continued as provided for non-conforming uses.
- C. If a lawful Non-conforming Building is damaged or destroyed to the extent of 50% or less of the appraised value, then replacement of the damaged portions of the building is allowed by right provided that the replaced portions are the same size, extent and configuration as previously existed. The determination of the appraised value shall be the higher of:
1. The records of the Assessor of the County of Alameda for the fiscal year during which such destruction occurred; or
 2. An appraisal performed by a certified appraiser. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.04.100 Rebuilding after Involuntary Destruction of Structure or Portion Thereof

- A. Notwithstanding Sections 23C.04.030, 23C.04.050, and 23C.04.090, any structure that is devoted exclusively to residential use and contains up to four residential units and any structure which is accessory thereto, or any portion thereof, may be replaced or reconstructed, subject to the issuance of a Zoning Certificate, if the City finds that all of the following conditions exist:
1. The structure, or any portion thereof, has been destroyed by any involuntary cause including fire, earthquake or flood.
 2. The replacement structure or portion thereof is substantially similar in use, dimensions, floor area, square footage, envelope, lot coverage, footprint, and number of units to the destroyed structure or portion thereof that it is designed to replace.
 3. The replacement or repair complies with all currently applicable building codes and any other regulations, adopted to protect against serious safety problems at the site such as engineering conditions, soil stability and the like, for example an ordinance or emergency regulation adopted by the Council or the Director of Emergency Services after a declared disaster.
 4. Where a structure to be replaced or rebuilt does not conform to subsection (2) above and is to be expanded or changed, such structure shall be subject to all otherwise applicable regulations governing such expansion or change.
- B. The Planning Director shall establish a process that allows an owner of a qualifying residential structure to apply for an advance determination that the proposed repair or replacement of a structure is substantially similar as required by paragraph A(2) including the information required to document existing conditions. The Planning Director shall also develop a description for owners of qualifying residential structures of such building information required by the City to document existing characteristics of the building in case of future damage or destruction. (Ord. 6954-NS § 2 (part), 2006)

Chapter 23C.06: Bed and Breakfast Establishments in Residential Districts

Chapter 23C.06

BED AND BREAKFAST ESTABLISHMENTS IN RESIDENTIAL DISTRICTS

Sections:

23C.06.010	Purpose
23C.06.020	Continued Operation -- Eligibility and Application
23C.06.030	Regulation of B&Bs
23C.06.040	Determinations by City Manager
23C.06.050	Status of B&B Uses Under This Chapter
23C.06.060	Future Regulations Applicable
23C.06.070	Automatic Repeal

Section 23C.06.010 Purpose

- A. The purpose of this chapter is to sanction the time-limited continued operation of bed and breakfast establishments in residential zoning districts that meet the requirements set forth in this chapter.
- B. This chapter is intended solely to alleviate the hardship that might occur if the owners of those bed and breakfast establishments were required to cease operation immediately, as would otherwise be required by the BMC Title 23 (zoning).
- C. The purpose of this chapter is not to permanently legalize such bed and breakfast establishments. (Ord. 6773-NS § 1 (part), 2003)

Section 23C.06.020 Continued Operation -- Eligibility and Application

- A. Bed and breakfast establishments (B&Bs) in operation in Berkeley as of the effective date of this chapter are eligible for continued operation subject to this chapter if, and only so long as, they satisfy the following conditions:
 1. The B&B has been in consistent operation since January 1, 2003;
 2. The building or buildings of which the B&B consists are legally constructed and comply with all applicable building, fire and housing code requirements, or are brought into compliance with those requirements within a reasonable time, as determined by the City;
 3. The B&B complies with all laws related to food service and food handling; and
 4. There is no City record of complaints about the B&B within the three years prior to January 1, 2003.
- B. In order to be granted continued operation under this chapter, owners of B&Bs that are eligible under the preceding subdivision must:
 1. Apply for continued operation no later than 90 days after the effective date of this chapter;
 2. Identify all owners and operators of the B&B; and
 3. Pay all transient occupancy and business license taxes, penalties and interest due and owing, as determined by the City Council. (Ord. 6773-NS § 1 (part), 2003)

Chapter 23C.06: Bed and Breakfast Establishments in Residential Districts

Section 23C.06.030 Regulation of B&Bs

B&Bs that are allowed to continue in operation under Section 23C.06.020 shall comply with the following requirements.

- A. The owner of the property on which the B&B is located must live there as their primary residence and must be the primary operator of the B&B.
- B. No part of a B&B may be rented for social events or functions.
- C. B&Bs may not be expanded beyond the number of rooms or units in existence as of January 1, 2003.
- D. Food service, if provided by the operator, may be provided only to paying guests.
- E. B&Bs shall comply with all applicable laws, ordinance and regulations concerning the preparation and service of food.
- F. B&Bs shall comply with all applicable disability access requirements.
- G. B&Bs shall pay all transient occupancy and business license taxes as they become due. (Ord. 6773-NS § 1 (part), 2003)

Section 23C.06.040 Determinations by City Manager

- A. The City Manager or their designee shall make the determinations required by this chapter, and their decision shall be final.
- B. The City Manager may give applicants under this chapter a reasonable period, but not to exceed six months, in which to bring the B&B into compliance with the requirements of Sections 23C.06.020 and 23C.06.030. (Ord. 6773-NS § 1 (part), 2003)

Section 23C.06.050 Status of B&B Uses Under This Chapter

- A. Any continued operation allowed under this chapter does not constitute a permit and shall not run with the land, but is limited to the owner(s)/operator(s) thereof identified under Section 23C.06.020.B.2, and is subject to the requirements set forth herein.
- B. B&Bs sanctioned by this chapter shall be treated as legal nonconforming uses, subject to automatic termination of the B&B use as set forth in this section.
- C. The owner shall file a deed restriction with the County Recorder, in a form approved by the City's Zoning Officer, notifying purchasers of the effect of this section. (Ord. 6773-NS § 1 (part), 2003)

Section 23C.06.060 Future Regulations Applicable

By seeking and accepting continued operation under this chapter, and thereafter operating a B&B, owners of B&Bs expressly agree that they shall be subject to any and all additional regulations that may be adopted by the City to permit and regulate new B&Bs, to the extent the City so requires. (Ord. 6773-NS § 1 (part), 2003)

Chapter 23C.06: Bed and Breakfast Establishments in Residential Districts

Section 23C.06.070 Automatic Repeal

If the limitation of Section 23C.06.050 of this chapter that B&Bs that are allowed to continue under this chapter shall cease operation upon transfer from their current owners is declared unlawful or invalidated by any court of competent jurisdiction, this chapter shall be deemed automatically repealed, and all B&B uses sanctioned by it shall immediately terminate. (Ord. 6773-NS § 1 (part), 2003)

Chapter 23C.08: Demolition and Dwelling Unit Controls

Chapter 23C.08

DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

23C.08.010	Demolition or Elimination of Dwelling Units--General Requirement
23C.08.020	Elimination of Dwelling Units through Demolition
23C.08.030	Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use
23C.08.035	Private Right of Action
23C.08.040	Elimination of Residential Hotel Rooms
23C.08.050	Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses
23C.08.060	Building Relocations
23C.08.070	Limitations

Section 23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement

- A. No Dwelling Unit or units may be eliminated or demolished except as authorized by the provisions of the chapter.
- B. The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.
- C. Demolition of buildings containing a single dwelling unit and buildings constructed after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but shall be subject to subdivisions B, C, and D of Section 23C.08.020. (Ord. 7458-NS § 1, 2016)

Section 23C.08.020 Elimination of Dwelling Units through Demolition

- A. The Board may approve a Use Permit to demolish a building constructed prior to June 1980 on a property containing two or more dwelling units if it makes the findings required by the foregoing section, and either:
 1. The building containing the units is hazardous or unusable and is infeasible to repair; or
 2. The building containing the units will be moved to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units; or
 3. The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community; or
 4. The demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of dwelling units.

When a project is approved under this paragraph, the project applicant shall be required to pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in the City of Berkeley. The amount of the fee shall be set by resolution of the City Council.

In the case of a unit with a tenant at the time of demolition, the provisions of Section 23C.08.020.C apply and the impact fee is due when that tenant vacates the unit.

Chapter 23C.08: Demolition and Dwelling Unit Controls

In lieu of paying the impact fee, the project applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council. The project applicant shall enter a regulatory agreement with the City of Berkeley to provide for the provision of any such in lieu units.

- B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, who will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.

- C. If the units in a building to be demolished under subdivision (A) are occupied, the following requirements shall apply.

1. Except as set forth in paragraph (2) below:

- a. The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Chapter 13.76.
- b. The applicant shall provide assistance with moving expenses equivalent to those set forth in Chapter 13.84.
- c. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

2. An applicant under this Chapter who proposes to construct a 100% affordable housing project shall provide relocation benefits that conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and the California Relocation Act (Government Code sections 7260 et seq.).

3. Except as set forth in paragraph (4) below, sitting tenants who are displaced as a result of demolition shall be provided the right of refusal to move into the new building; and tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues. Income restrictions shall not apply to displaced tenants.

4. In cases where an applicant under this Chapter has constructed a 100% affordable housing project, sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

5. The provisions of this section shall not apply to tenants who move in after the application for demolition is submitted to the City provided that the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

- D. Notwithstanding anything in Title 23 to the contrary, but subject to any applicable requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), accessory buildings of any size, including, but not limited to, garages, carports and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right. (Ord. 7458-NS § 2, 2016)

Chapter 23C.08: Demolition and Dwelling Unit Controls

Section 23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use

- A. The Board may approve a Use Permit for the elimination of a dwelling unit through combination with another dwelling unit for purposes of occupancy by a single household if it finds that:
1. The existing number of dwelling units exceeds the number permitted by the maximum residential density applicable to the District where the subject building is located; and
 2. One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years prior to the date of the application and none of the affected units is currently occupied by a tenant, or all dwelling units that would be affected by the elimination are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years prior to the date of their death.
- B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, who will provide an assessment of the evidence and all available documentation to the Zoning Officer or Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.
- C. In the event a unit eliminated pursuant to subdivision (A) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City, which provides that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area, which shall be deposited into the City's Housing Trust Fund. The City may exempt an applicant from the two year residency requirement in the event of an unforeseeable life change that requires relocation.
- D. In cases where elimination of a dwelling unit reduces the number of units in a building to four (4), the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall continue to apply until such time as the building is demolished or sufficient units are added or restored such that the building contains at least five (5) units.
- E. Alternatively, the Zoning Officer may issue an AUP for a conversion which eliminates a dwelling unit if they find that the conversion of the building will restore or brings the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of A.2., B., C. and D. of this section.
- F. The Board may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the District in which it is located.
- G. The Board may approve a Use Permit for the elimination of a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to Single-Residential Occupancy (SRO) Rooms in residential developments undergoing a publicly-funded rehabilitation.
- H. Notwithstanding the general Use Permit requirement under 23C.08.010, a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated subject to the issuance of a Zoning Certificate when the re-conversion restores the original single family use of the main building or lot, provided that no tenant is evicted. (Ord. 7458-NS § 3, 2016)

Chapter 23C.08: Demolition and Dwelling Unit Controls

Section 23C.08.035 Private Right of Action

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover reasonable attorney's fees. (Ord. 7458-NS § 4, 2016)

Section 23C.08.040 Elimination of Residential Hotel Rooms

- A. The Board may approve a Use Permit to remove a Residential Hotel Room if it finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel owner will provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant; and
1. The Residential Hotel Rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge or recreation room, that will be available to and primarily of benefit to the existing residents of the Residential Hotel and that a majority of existing residents give their consent to the removal of the rooms;
 2. Prior to the date on which the Residential Hotel Rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section; or
 3. Residential Hotel Rooms being removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).
- B. For purposes of this section, replacement rooms must be substantially comparable in size, location, quality and amenities, and available at comparable rents and total monthly or weekly charges to those being removed. The replacement rooms must also be subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced. Comparable rooms may be provided by:
1. Offering the existing tenants of the affected rooms the right-of-first-refusal to occupy the replacement rooms;
 2. Making available comparable rooms, which are not already classified as Residential Hotel Rooms to replace each of the rooms to be removed; or
 3. Paying to the City's Housing Trust Fund an amount sufficient to provide replacement rooms. The amount to be paid to the City shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30% of such tenant's gross income for rent.
- C. In a Residential Hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, Residential Hotel Rooms may be changed to non-residential hotel room uses providing that the average number of Residential Hotel Rooms per day in each calendar year is at least 95% of Residential Hotel Rooms established for that particular Residential Hotel. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.08: Demolition and Dwelling Unit Controls

Section 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses

- A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.
- B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.
- C. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.
- D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:
 - 1. Is required to allow a proposed new building or other proposed new Use;
 - 2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;
 - 3. Will remove a structure which represents an unabatable attractive nuisance to the public; or
 - 4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.060 Building Relocations

- A. The relocation of a building from a lot is considered a demolition for purposes of this Ordinance.
- B. The relocation of a building to a lot is considered new construction and shall be subject to all requirements applicable to new construction.
- C. When a building is relocated to a different lot within the City, the lot from which the building is being removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.
- D. The Board may approve a Use Permit for relocation to a lot if it finds that the building proposed to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area in which such building is to be located, and the receiving lot provides adequate separation of buildings, privacy, yards and Usable Open Space. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.070 Limitations

- A. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined the City's Building Official, it may be demolished without a Use Permit. The Building Official's determination

Chapter 23C.08: Demolition and Dwelling Unit Controls

in this matter shall be governed by the standards and criteria set forth in the most recent edition of the California Building Code that is in effect in the City.

- B. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the state statute known as the Ellis Act. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.10: Emergency Shelter Zoning

Chapter 23C.10

EMERGENCY SHELTER ZONING

Sections:

23C.10.010	Applicability
23C.10.020	Purpose
23C.10.030	Permit Requirement
23C.10.040	Standards for Emergency Shelters Located in Commercial Districts
23C.10.050	Seasonal Emergency Shelters Located in Residential Districts
23C.10.060	Maximum Bed Count Per Shelter by Zoning District
23C.10.070	Findings

Section 23C.10.010 Applicability

This Chapter applies to all emergency shelters, as defined in Chapter 23F, established after January 1, 2014. Existing emergency shelters for the homeless that were established prior to adoption of this Chapter shall continue to operate under the conditions in those approvals and permits, all other applicable provisions of this Code, and any limitations and requirements imposed as a condition of funding. Such existing emergency shelters shall be treated as legal nonconforming uses under Chapter 23C.04. (Ord. 7322-NS § 1 (part), 2013)

Section 23C.10.020 Purpose

The purpose of this Chapter is to establish standards of operation for emergency shelters that assure compatibility of shelter activities with surrounding uses and provide a safe place for individuals and families to obtain temporary shelter. (Ord. 7322-NS § 1 (part), 2013)

Section 23C.10.030 Permit Requirement

In districts where emergency shelters are a permissible use, a Zoning Certificate or Permit shall be issued for the use when the applicable requirements of this Chapter are met. (Ord. 7322-NS § 1 (part), 2013)

Section 23C.10.040 Standards for Emergency Shelters Located in Commercial Districts

- A. No individual or household may be denied emergency shelter because of an inability to pay.
- B. No emergency shelter shall be located within 300 feet of another emergency shelter, provided that a Use Permit may be obtained to allow a buffer distance less than stated above.
- C. When abutting a residentially-zoned property all areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.
- D. The maximum number of beds shall be as set forth in Table 23C.10.060; provided, that a Use Permit may be obtained to allow exceeding the maximum bed count.
- E. Required emergency shelter facilities:
 1. An area for onsite client intake equal to 1/4 of the area provided for client beds. This may be a multi-use area.
 2. Showers and restroom facilities.

Chapter 23C.10: Emergency Shelter Zoning

- F. Optional facility services may include:
1. Secure personal storage.
 2. Daytime services.
 3. Meal services.
 4. Communal kitchen.
 5. Laundry equipment for clients.
 6. Child care.
 7. Vehicle and/or bicycle parking.
- G. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures, and shall be directed in a manner that does not cast light onto neighboring properties.
- H. On-site management shall be provided at all times the facility is in operation and at least one hour prior to and after facility operation hours.
- I. Prior to issuance of a Zoning Certificate the shelter operator shall submit a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address:
1. Client congregation outside of the shelter facility in order to prevent queuing within the public right-of-way.
 2. Eligibility criteria, enforcement rules, and procedures for disruptive clients.
 3. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
 4. Bed bug prevention.
 5. Refuse collection.
 6. Security procedures.
 7. Separation of sleeping areas and restrooms by gender and for families.
 8. Consistency with the Alameda County-Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
- J. Prior to issuance of a Zoning Certificate the shelter provider shall provide evidence that a community meeting was held and that all owners and occupants on record with the Alameda County Assessor within a 100 foot radius of the proposed shelter location were notified. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer. (Ord. 7322-NS § 1 (part), 2013)

Chapter 23C.10: Emergency Shelter Zoning

Section 23C.10.050 Seasonal Emergency Shelters Located in Residential Districts

- A. In addition to all of the requirements for emergency shelters in Section 23C.10.040, seasonal emergency shelters may be located in residential districts listed in Table 23C.10.060 subject to the following requirements:
1. Such shelters shall be incidental to a Community and Institutional Use and may use or occupy no more than 25% of the gross floor area of the Community and Institutional Use, provided that a UPPH may be granted to use or occupy up to 49% of an existing or proposed Community and Institutional Use.
 2. Such shelters may operate only during the wet weather season from November 15 through April 15, unless the City Manager determines in any given year that the wet season has begun earlier or extended later than these dates. (Ord. 7322-NS § 1 (part), 2013)

Section 23C.10.060 Maximum Bed Count Per Shelter by Zoning District

- A. The table below lists the maximum number of beds per shelter facility for each zoning district in which shelters are a permissible use. "NA" indicates that shelters are not a permissible use.

Table 23C.10.060

Maximum Bed Count Per Shelter by Zoning District*			
Commercial districts	Beds	Residential districts	Beds
C-1	25	R-1	NA
C-N	25	R-1A	NA
C-E	25	E-SR	NA
C-NS	25	R-2	NA
C-SA	25	R-2A	NA
C-T	25	R-3	NA
C-SO	25	R-4	15
C-W	25	R-5	15
C-DMU	60	R-S	15
		R-SMU	15

*Maximum bed counts can be exceeded with a UPPH per Section 23C.10.040.D.

(Ord. 7322-NS § 1 (part), 2013)

Section 23C.10.070 Findings

- A. To exceed the maximum bed limit in Section 23C.10.040.D or the incidental use floor area limit in Section 23C.10.050, the Board must find that:
1. A larger shelter facility will help meet the City's goals pertaining to emergency housing of the homeless;
 2. The circumstances of the subject property make the larger facility appropriate; and
 3. Design features will minimize impacts on the surrounding area. (Ord. 7322-NS § 1 (part), 2013)

Chapter 23C.12: Inclusionary Housing Requirements

Chapter 23C.12

INCLUSIONARY HOUSING REQUIREMENTS*

Sections:

23C.12.010	Purpose
23C.12.020	Applicability of Regulations
23C.12.030	General Inclusionary Requirement: 20% of Units
23C.12.035	Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project
23C.12.040	Requirements Applicable to all Inclusionary Units
23C.12.050	Repealed by Ord. 7644-NS
23C.12.060	Inclusionary Unit Requirements for Rental Housing Projects
23C.12.070	Inclusionary Unit Requirements for Ownership Projects*
23C.12.080	Special Requirements for Avenues Plan Area
23C.12.090	Administrative Regulations*
23C.12.100	Fees

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

Section 23C.12.010 Purpose

The purpose of this chapter is to promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median, as defined in this chapter, or, in the case of Limited Equity Cooperatives, households with incomes below 120% of the median income by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.12: Inclusionary Housing Requirements

Section 23C.12.030 General Inclusionary Requirement: 20% of Units

- A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least 51% of their units as Inclusionary Units.
- B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be paid as an in-lieu fee.
- C. For the purpose of determining the median income levels for Households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

- A. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.
- B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.
- C. Amount of Fee.
 1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
 2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.
 3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.
 4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.
- D. Calculation of Inclusionary Sales Price.
 1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.
 2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

Chapter 23C.12: Inclusionary Housing Requirements

- E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.
- F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

Section 23C.12.040 Requirements Applicable to all Inclusionary Units

- A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross incomes do not exceed 120% of the Oakland PMSA median.
- B. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all Dwelling Units and other information as required for determining compliance with this chapter.
- C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of non-inclusionary units.
- D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.
- E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee to the City.
 - 1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects, where Government Code Section 65915 does not apply, and the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects where Government Code Section 65915 does apply to require a Density Bonus or equivalent incentive.;
 - 2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation), to provide, construct or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.
- F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the Board may approve one or more of the following measures to reduce costs or increase profitability:
 - 1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such units conform to applicable building and housing codes;
 - 2. An increase in the number of bedrooms in the Inclusionary Units;
 - 3. In a home ownership project, construction of rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects;
 - 4. Waiving of the in-lieu participation fees for fractions of units. (Ord. 6676-NS § 2, 2002: Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.12: Inclusionary Housing Requirements

Section 23C.12.050 State of California Density Bonus Requirements

Repealed by Ord. 7644-NS. (Ord. 6848-NS § 3 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects

- A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.
- B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an appropriate-sized Household whose income is 81% of the Oakland PMSA median.
- C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price that is affordable to Low or Lower Income Households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices shall be affordable to Households at 81% income of the Oakland PMSA median.
- D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall be affordable to a Household with income that is 60% of the Oakland PMSA median.
- E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's Gross Income.
 1. Gross Household Income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;
 2. For purposes of calculating rent, appropriate Household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.
- F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this section for the life of the building.
- G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the eligible Households referred by the City.
- H. The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the Inclusionary Units by eligible Households. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.070 Inclusionary Unit Requirements for Ownership Projects*

- A. Inclusionary Units in ownership projects shall be sold as set forth below:
 1. Inclusionary Units in ownership projects shall be sold at a price that is affordable to an appropriate-sized Household whose income is no more than 80% of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation;
 2. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other

Chapter 23C.12: Inclusionary Housing Requirements

equivalent program(s) of the City of Berkeley, which are in effect at the time said units are offered for sale by the developer.

- B. The applicant for a project other than a Limited Equity housing Cooperative shall be required to give right-of-first-refusal to purchase any or all new Inclusionary Units to the City or a City-designated agency or organization for a period of not less than 60 days as evidenced by issuance of a Certificate of Occupancy.
- C. Should the City choose not to exercise its right-of-first-refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days. If the list is not provided, the applicant may select a Low Income purchaser of their choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter. The City shall maintain a list of eligible Low Income Households and review the assets and incomes of prospective purchasers of the Inclusionary Units on a project by project basis and refer potential purchasers to the applicant or owner.
 - 1. All purchasers of Inclusionary Units shall be first-time home buyers from Low, Lower or Very Low Income Households. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower or Very Low Income Household at a rent affordable by such Households;
 - 2. Eligible City Residents will have first preference for Inclusionary Units; second preference will be given to eligible persons employed in the City. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals;
 - 3. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of Inclusionary Units as specified in this chapter and shall provide purchasers with a Declaration of Restrictions applicable to ownership of Inclusionary Units as specified in this chapter;
 - 4. Purchasers of Inclusionary Units in Limited Equity Cooperatives at time of first occupancy shall be first time home buyers with Gross Incomes no greater than 120 percent of the Oakland PMSA median. Subsequent purchasers of Inclusionary Units in Limited Equity Cooperatives shall be first time home buyers whose yearly Gross Income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income shall be no more than 110 percent of the Oakland PMSA median.
- D. All Inclusionary Units developed under this chapter except for those in Limited Equity Cooperatives shall be subject to the resale restrictions set forth below.
 - 1. Home ownership Inclusionary Units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for the lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA or of the increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA;
 - 2. This resale formula shall supercede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006. The City of Berkeley, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section. All other terms and conditions of these deed restrictions shall remain in effect;
 - 3. If the City does not act on its right-of-first-refusal, the same procedure for new Inclusionary Units shall be used for selection of a purchaser.

Chapter 23C.12: Inclusionary Housing Requirements

- E. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.
- F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord. 6920-NS § 1-2 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

Section 23C.12.080 Special Requirements for Avenues Plan Area

A. The City Council finds and determines that:

1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing development;
2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit processes; and insufficient financing, especially for affordable housing projects;
3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services and retail stores;
4. The policy to encourage housing in this area is reflected in a number of documents, including, but not limited to, the City's Housing Element of the Master Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan and the University Avenue statement of planning of goals;
5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area;
6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate;
7. These changes will also assist the buyer of below market rate Inclusionary Units, by allowing them to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of Inclusionary Units;
8. The changes will also encourage the construction of larger, family-sized units rather than the smaller units which have generally been built in multi-family developments;
9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes;
10. The success of these changes will be reviewed annually, until the five year time period of the Avenues Plan experiment expires July 1, 2000.

Chapter 23C.12: Inclusionary Housing Requirements

- B. This section applies on the streets and the addresses listed in the Table below. The area of applicability consists of the entire C-2 District and portions of the C-1, C-SA, C-W, C-N, R-2A, R-3 and R-4 Districts as indicated in the Table. Within this area, the provisions of this section supersede any inconsistent provisions of this chapter.

<i>Table 23C.12.080</i>	
Avenues Plan Area: Street and Address Range	
<u>Street</u>	<u>Addresses</u>
Acton	1940-2100
Addison	841-1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700-1937
Allston Way	1901-1999 odd, 2000 up
Ashby Avenue	1830-2117, 2118-2198 even
Bancroft Way	2000-2300
Berkeley Square	All
Berkeley Way	1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up
Blake	1800-2100
Bonar	2000-2099
Bonita	1900-1950 even, 1950-1999
Browning	portion of West Campus only
California	1950-2009
Carleton	2000-2117
Center	All
Channing Way	1800-1850 even, 2000-2200, 2200-2300 odd
Cowper	All
Chestnut	1910-1950 even, 1950 up
Curtis	1900-2100, portion BUSD
Delaware	1041-1112, 2000-2200 even
Derby	2000-2113
Dover	All
Durant Avenue	2000-2300
Dwight Way	1800-1850 even, 1850-2200
Ellis	3124-3320 odd
Emerson	2000-2111
Essex	1901-2106
Fairview	1750 up
Fulton	2200-2400, 2400-2606 even
Grant	1800-1900 odd, 1900-2050, 2501-2599 odd
Harold Way	All
Harmon	1750 up
Harper	2901-3123 odd
Haste	1900-1998 even, 2000-2200
Hearst	1032-1200, 1800-2000 even, 2000-2200
Henry	1900 up
Jefferson Avenue	2000-2050

Chapter 23C.12: Inclusionary Housing Requirements

Table 23C.12.080

Avenues Plan Area: Street and Address Range

<u>Street</u>	<u>Addresses</u>
King	3221 up, odd
Kittredge	All
Martin Luther King Jr. Way	1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up
McGee Avenue	1900-2050
McKinley Avenue	2400-2500 odd
Milvia	1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only
Newbury	All
Oregon	2000-2122
Otis	All
Oxford	1800-2200
Parker	1800-1998 even, 2000-2200
Prince	1830-2105
Russell	1820-2000 even, 2000-2117
Sacramento	1900-2000, 2050-2100 even
San Pablo Avenue	1800-2199
Shattuck Avenue	1800 up
Shattuck Square	All
Stuart	2100-2107
Tremont	All
University Avenue	840 up
Walnut	1800 up
West	1950-1999
Whitney	All
Woolsey	1750-2110
6th	1916-2099
7th	1912-2099
8th	1910-2099
9th	1910-2099
10th	1908-2099
62nd	1700 up
63rd	1700 up

- C. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant Commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.
- D. For purposes of this section, the following definitions apply:
1. Project means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned or controlled lots, regardless of whether those units are all built simultaneously;

Chapter 23C.12: Inclusionary Housing Requirements

2. Affordable family-sized unit means a unit which:

- a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
- b. Contains at least two lawful bedrooms;
- c. Contains at least as many bathrooms as the corresponding two bedroom market rate units; and
- d. Is sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

E. Except as provided in this chapter, the number of Inclusionary Units required are as set forth in the following table:

Total Number of Units Built	Number of Inclusionary Units Required
10-14	1
15-19	2
Each additional multiple of 5 units	1 additional

- F. For every five units which the applicant can demonstrate with bona fide sales documents have been sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median, the applicant shall be released of the obligation to provide one Inclusionary Unit.
- G. For every ten affordable family-sized units, the applicant shall be released of the obligation to provide one Inclusionary Unit sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median.
- H. Within the area of applicability for that portion of a project wherein both the Inclusionary and the non-inclusionary Units contain at least as many bathrooms as the corresponding two bedroom market rate units, only ten percent of units are required to be Inclusionary.
- I. The first Inclusionary Unit in projects with units for sale shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD. Except as otherwise provided in Section 23C.12.080.D.2.d above, the second Inclusionary Unit shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than 100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price levels.
- J. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a Household of appropriate size with an income at the targeted level shall not exceed 33 percent of income. This cost shall be calculated assuming that the buyer makes a ten percent down payment, which shall not be considered a portion of the cost. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the Department of Real Estate and shall not be changed subsequent to that time for that project, regardless of future changes in cost.
- K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.12.090 Administrative Regulations*

- A. The City Manager or their designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees,

Chapter 23C.12: Inclusionary Housing Requirements

entering into recorded agreements with applicants and taking other appropriate steps necessary to assure that the required low income and very low income Dwelling Units are provided and occupied by Low Income Households. (Ord. 6920-NS § 3 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

Section 23C.12.100 Fees

The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS § 1, 2005)

Chapter 23C.14: Density Bonus

Chapter 23C.14

DENSITY BONUS

Sections:

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Incentives and Concessions
23C.14.060	Waivers and Reductions
23C.14.070	Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

Section 23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Sections 65915--65918 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this Chapter are to the California Government Code. (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Sections 65915--65918, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
- C. "Density Bonus" means those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Eligible Housing Development" has the meaning set forth in Section 65917.2.
- E. "Housing Development" has the meaning set forth in Section 65915(i).
- F. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.
- G. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with

Chapter 23C.14: Density Bonus

Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request. (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.030 Application Requirements

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
- B. For those districts without density standards, a density bonus schematic as set forth in the Administrative Regulations;
- C. The requested Density Bonus pursuant to Berkeley Municipal Code Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units. The City may request reasonable documentation from the applicant to support the request.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs. The City may request reasonable documentation from the applicant to support the request.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p). The City may request reasonable documentation from the applicant to support the request.
- H. Whether the applicant elects to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant retains their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3). (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.040 Density Bonus Calculations and Procedures

- A. Density Bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development permit applications and will be decided upon concurrent with the underlying Permit for the project. (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.050 Incentives and Concessions

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer, Zoning Adjustments Board or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one

Chapter 23C.14: Density Bonus

Permit (e.g., extra height may require Permits for height, Floor Area Ratio, and/or number of stories but would count as one Incentive and Concession for height).

3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer, Zoning Adjustments Board or City Council, as the case may be.
- B. The City shall grant Incentives and Concession unless findings are made as set forth in Section 65915(d)(1).
 - C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1). The City bears the burden of proof for the denial of a requested Incentive and Concession.
 - D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review of Permits under this Title, other than Design Review, and by law do not modify the CEQA review status of a project. (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.060 Waivers and Reductions

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a Housing Development and Density Bonus Units meeting the criteria of Section 65915(b).
- B. The City may negotiate changes to the requested Waivers and Reductions as part of the Use Permit and Design Review process, in coordination with the applicant, in order to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance and Design Guidelines.
- C. The City may deny Waivers and Reductions for the reasons set forth in Section 65915(e)(1). (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.070 Qualifying Units

Qualifying Units must meet the standards set forth in subdivisions B, C, and D of Section 23C.12.040. (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.080 Special Provisions

In addition to requirements set forth in Sections 65915--65918 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED] (Ord. 7644-NS § 2 (part), 2019)

Section 23C.14.090 Regulatory Agreements

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915--65918 and this Chapter. (Ord. 7644-NS § 2 (part), 2019)

Chapter 23C.16: Home Occupations

Chapter 23C.16

HOME OCCUPATIONS

Sections:

- 23C.16.010** **General Requirements**
- 23C.16.020** **Permit Requirements (See 23F.04 for Home Occupation definitions.)**
- 23C.16.030** **Findings**
- 23C.16.040** **Complaints and Imposition of Conditions**

Prior legislation: Ords. 6478-NS, 6909-NS and 7068-NS.

Section 23C.16.010 General Requirements

- A. The establishment of a Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a primary residence, but rather shall be considered a lawful Incidental Use thereof.
- B. Home Occupations are subject to the following requirements:
 - 1. A Home Occupation is allowed as an incidental use within a Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room.
 - 2. No Firearm/Munitions Business may operate as a Home Occupation.
 - 3. Customer visits are not allowed in the ES-R District.
 - 4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room from which it operates.
 - 5. Only residents of the subject Dwelling Unit, Accessory Dwelling Unit or Group Living Accommodation room, who live in the unit or room full time, may operate a Home Occupation business.
 - 6. Customer visits may occur only between the hours of 10 a.m. and 8 p.m.
 - 7. Storage, services, repairs and other business activities, other than permitted arrival and departure of customers and goods in transit, may not be conducted outdoors.
 - 8. A Home Occupation shall not involve hazardous materials or waste as defined by Section 15.08.060, or any other materials or waste that is deemed by the Hazardous Material Manager (or their designee or successor) to be inappropriate or unsafe for a residential setting.
 - 9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt, or electrical or other disturbance perceptible by the average person beyond the unit in which the Home Occupation is permitted.
 - 10. No on-site signs identifying or advertising the Home Occupation, are allowed.
 - 11. The operator of a Home Occupation shall pay gross receipts taxes pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.
 - 12. A lessee in possession of a property may apply for a Permit without the property owner's signature; however Home Occupations are not exempt from conditions in rental and lease agreements which may limit or prohibit Home Occupations. (Ord. 7753-NS § 1, 2021)

Chapter 23C.16: Home Occupations

Section 23C.16.020 Permit Requirements (See 23F.04 for Home Occupation definitions.)

- A. A Class I Home Occupation is allowed subject to a Zoning Certificate.
- B. A Class II Home Occupation is allowed subject to issuance of an Administrative Use Permit.
- C. A Class III Home Occupation is allowed subject to issuance of a Use Permit (Public Hearing). (Ord. 7753-NS § 1, 2021)

Section 23C.16.030 Findings

In addition to the findings set forth in Section 23B.28.050 and Section 23B.32.040, in order to approve an Administrative Use Permit for a Class II Home Occupation or a Use Permit (Public Hearing) for a Class III Home Occupation, the Zoning Officer or Board must find, based on the circumstances of the specific use and property:

- 1. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the Home Occupation; and
- 2. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation; and
- 3. If the proposed Home Occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation.
- 4. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshal. (Ord. 7753-NS § 1, 2021)

Section 23C.16.040 Complaints and Imposition of Conditions

Home Occupations are subject to review, the imposition of conditions, or revocation.

- A. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.
- B. The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing Class I and II Home Occupations, and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available.

The Zoning Adjustments Board shall review documented complaints, business operations, and other factors when reviewing Class III Home Occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available. (Ord. 7753-NS § 1, 2021)

Chapter 23C.17: Wireless Telecommunication Facilities

Chapter 23C.17

WIRELESS TELECOMMUNICATION FACILITIES

Sections:

23C.17.010	Applicability of Regulations
23C.17.020	Purpose
23C.17.030	General Requirements
23C.17.040	Minimum Application Requirements
23C.17.050	Locational Requirements
23C.17.060	Height Requirements
23C.17.070	Design Requirements
23C.17.080	Operation and Maintenance Standards
23C.17.085	Public Information Requirements
23C.17.090	Requirement for Certification of Facilities
23C.17.100	Findings Required for Approval
23C.17.110	Cessation of Operations

Section 23C.17.010 Applicability of Regulations

The regulations contained in this chapter shall apply to all wireless telecommunications facilities for personal wireless services on property other than the public right-of-way in the City of Berkeley. (Ord. 7073-NS § 1, 2009)

Section 23C.17.020 Purpose

- A. The purpose of this chapter is to provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities”) for personal wireless services. These regulations are designed to protect and promote public safety, community welfare and the aesthetic quality of the city consistent with the goals, objectives and policies of the Berkeley Master Plan, while at the same time providing for managed development of wireless telecommunications infrastructure in accordance with the Telecommunications Act of 1996.
- B. The objectives of this chapter include but are not limited to the following:
1. Foster an aesthetically pleasing urban environment, prevent visual blight, protect and preserve public safety and general welfare, and maintain the character of residential areas, including those adjacent to commercial areas and neighborhood commercial areas, consistent with the adopted General Plan and Area Plans and in compliance with applicable state and federal legislation;
 2. Because wireless telecommunications antennas and related facilities for cellular and mobile phones and personal communications systems are a commercial use that is usually separate from and is rarely accessory to the primary use of a parcel, to prevent the location of such facilities in residentially zoned districts unless (a) the City is required to permit them in such locations in order to avoid violating the Telecommunications Act of 1996, and (b) the wireless telecommunications facilities are designed to interfere as little as possible with the character of the neighborhood;
 3. Establish and maintain telecommunications facilities that are components of a wireless telecommunications infrastructure designed to enhance the city’s emergency response network and do not interfere with such emergency systems in violation of applicable federal or state regulations;
 4. Establish a process for obtaining necessary permits for wireless telecommunication facilities that provides greater certainty to both applicants and interested members of the public while ensuring compliance with all applicable zoning requirements;

Chapter 23C.17: Wireless Telecommunication Facilities

5. Provide opportunities for further reduction in potential aesthetic or land use impacts of wireless telecommunications facilities as changes in technology occur; and
6. Support the use of personal wireless services to enhance personal and public health and safety as well as the public welfare of the City of Berkeley. (Ord. 7073-NS § 1, 2009)

Section 23C.17.030 General Requirements

In addition to any other requirements imposed by this chapter, all wireless telecommunications facilities on property other than the public right-of-way in the City of Berkeley shall be consistent with:

- A. The Berkeley General Plan, adopted Area Plans, and all other applicable provisions of the Zoning Ordinance.
- B. Applicable regulations and standards of any other governmental agency with jurisdiction over the installation or operation of wireless telecommunications facilities including, but not limited to, the Federal Communications Commission, the Federal Aviation Administration, and the California Public Utilities Commission.
- C. Any applicable discretionary permits affecting the subject property, except to the extent the Zoning Officer or the Zoning Adjustments Board may modify such requirements.
- D. For purposes of this Chapter, "microcell" means a set of antenna nodes networked with each other and connected to a wireless service source, such that a one or more high-power antennas that serve a given area are replaced by a group of lower-power antennas to serve the same geographic area. (Ord. 7073-NS § 1, 2009)

Section 23C.17.040 Minimum Application Requirements

- A. Purpose. This Section establishes limited additional application submittal requirements for wireless telecommunications facilities. The purpose of these additional application requirements is to ensure that the purposes of this Chapter are implemented to the extent permitted by the Telecommunications Act of 1996.
- B. In addition to meeting the standard application submittal requirements for permits specified in Chapter 23B.24, applications for wireless telecommunication facilities pursuant to this chapter, shall include the information set forth in this Section.
- C. Coverage map and general information.
 1. A narrative description and map showing the coverage area of the provider's existing facilities that serve customers in Berkeley and the specific site that is the subject of the application.
 2. A statement of the telecommunications objectives sought for the proposed location, whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area, whether it is the least intrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service. Applications for Administrative Use Permits need not include information as to whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area.
- D. Technical information.
 1. Copies of, or a sworn statement by an authorized representative that applicant holds, all applicable licenses or other approvals required by the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any other agency of the Federal or State government with authority to regulate telecommunications facilities that are required in order for the applicant to construct the proposed facility.

Chapter 23C.17: Wireless Telecommunication Facilities

2. Documentation of, or a sworn statement by an authorized representative that applicant is in, compliance with all conditions imposed in conjunction with such licenses or approvals, a description of the number, type, power rating, frequency range, and dimensions of antennas, equipment cabinets, and related wireless telecommunications facilities proposed to be installed, and engineering calculations demonstrating that the proposed facility will comply with all applicable FCC requirements and standards.
- E. Visibility.
1. A site plan, plans, and elevations drawn to scale. Plans shall include microcell, facade- or roof-mounted antennas and all related equipment. Elevations shall include all structures on which facilities are proposed to be located.
 2. A description of the proposed approach for screening or camouflaging all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials and colors, and an explanation of the measures by which the proposed facility will be camouflaged or rendered not readily visible. Where any part of the proposed facility would be readily visible, the application shall include an explanation as to why it cannot be rendered not readily visible.
 3. A visual impact analysis including scaled elevation diagrams within the context of the building, before and after photo simulations, and a map depicting where the photos were taken. The Zoning Officer may require the submission of photo overlays, scaled models, renderings, or mockups to document the effectiveness of techniques proposed to minimize visibility.
 4. If a ground-mounted or freestanding tower is proposed, the application must include an explanation as to why other facility types are not feasible.
- F. Peer review.
1. The application shall include sufficient information for an approved radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies (hereinafter, "an approved engineer") retained by the City to peer review the information provided in response to subdivisions C and D of this Section.
 2. The application shall also include an agreement to pay the reasonable actual cost and a reasonable administrative fee for hiring an approved engineer to provide peer review.
 3. Any proprietary information disclosed to the city or its engineer in confidence shall not be a public record and shall remain confidential and not be disclosed to any third party without the express consent of the applicant. The City and/or its engineer shall return all proprietary information to the applicant and not retain any copies of such information once its decision is final.
- G. Monitoring. An agreement to pay a reasonable one-time or annual fee for independent monitoring as required by this Chapter.
- H. A statement that prior to obtaining a building permit to erect or install the proposed facility, the applicant shall either secure a bond or provide financial assurances, in a form acceptable to the City Manager, for the removal of the facility in the event that its use is abandoned or the approval is otherwise terminated.
- I. The Zoning Officer may require information concerning noise that might be generated by equipment associated with a wireless telecommunication facility, such as air conditioning equipment, if the physical circumstances of the proposed facility suggest that such noise may be detrimental. (Ord. 7073-NS § 1, 2009)

Section 23C.17.050 Locational Requirements

- A. Reserved.

Chapter 23C.17: Wireless Telecommunication Facilities

- B. No wireless communications facilities shall be sited on or above a ridgeline or at any other location readily visible from a public park, unless the Zoning Adjustments Board makes the applicable findings required in Section 23C.17.100.
- C. No new freestanding facility, including towers, lattice towers and monopoles, shall be located within 1,000 feet of another freestanding facility, unless appropriate stealth techniques have been used to minimize the visual impact of the facility to the extent feasible, and mounting on a building or co-location on an existing pole or tower is not feasible.
- D. The Zoning Officer may approve minor modifications and aesthetic upgrades that do not increase the size or visibility of any legally established wireless telecommunication facilities without notice or hearing, subject to compliance with all existing conditions of approval. (Ord. 7073-NS § 1, 2009)

Section 23C.17.060 Height Requirements

- A. The height of a telecommunications tower shall be measured from existing grade below the center of the base of the tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. The height of building-mounted antennas shall include the height of that portion of the building on which the antenna is mounted. In the case of “crank-up” or similar towers whose height is adjustable, the height of the tower shall be the maximum height to which it is capable of being raised.
- B. No antenna telecommunications tower or facade-mounted antenna shall exceed or project above the height limits specified for the district in which the antenna is located.
- C. Roof-mounted antennas affixed to an existing or proposed tower or pole shall not extend or project more than 15 feet above the height limit of the district.
- D. Roof-mounted or facade-mounted antennas proposed on an existing building, tower, or pole that is legal non-conforming in terms of height shall not extend or project more than 15 feet above the existing height of the building or structure. (Ord. 7073-NS § 1, 2009)

Section 23C.17.070 Design Requirements

In addition to all other requirements set forth in this chapter, all wireless telecommunication facilities shall meet the following design requirements:

- A. Based on potential aesthetic impact, the order of preference for facility type is: microcell, facade-mounted, roof-mounted, ground-mounted, and freestanding tower.
- B. All facilities shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by means of placement, screening, and camouflage. The applicant shall use the smallest and least visible antennas feasible to accomplish the owner/operator’s coverage or capacity objectives. All wireless telecommunications facilities proposed for locations where they would be readily visible from the public right-of-way or from the habitable living areas of residential units within 100 feet shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment, to the greatest extent feasible. Facilities shall be compatible in scale and integrated architecturally with the design of surrounding buildings or the natural setting.
- C. No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor except as provided in subsection 1, below.
 - 1. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized. Roof-mounted and ground-mounted antennas shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas unless the Zoning Officer or the Zoning Adjustments Board finds that the facility incorporates appropriate, creative stealth techniques to

Chapter 23C.17: Wireless Telecommunication Facilities

camouflage, disguise, and/or blend into the surrounding environment to the extent possible. Roof mounted antennas shall be designed and sited to minimize their visibility and shall be no taller than necessary to meet the operator's service requirements. Where roof-mounted antennas are readily visible, confirmation of necessary height for service requirements, at the Zoning Officer's discretion, shall be based on independent analysis by an approved engineer retained by the City.

2. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function. When screened from pedestrian-level view from the public right-of-way and not readily visible from any property that contains a legally established residential use, such antennas may be located in any required yard subject to the approval of a Use Permit under Section 23D.08.060.B. No such antenna may exceed 39 inches in diameter unless the Zoning Officer or the Zoning Adjustments Board finds that a smaller antenna cannot feasibly accomplish the provider's technical objectives. The Zoning Officer may require that this determination be based on independent technical analysis by an approved engineer.
 3. All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation unless a higher monopole or lattice tower will facilitate co-location or other objectives of this Chapter.
- D. Colors and materials for facilities shall be chosen to minimize visibility. All visible exterior surfaces shall be constructed of non-reflective materials. Facilities shall be painted or textured using colors to match or blend with the primary background.
 - E. Facility lighting shall be designed to meet but not exceed minimum requirements for security, safety or FAA regulations, and in all instances shall be designed to avoid glare and minimize illumination on adjacent properties. Lightning arresters and beacon lights shall not be included in the design of facilities unless required by the FAA. Lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
 - F. No advertising shall be placed on telecommunications antennas or other equipment.
 - G. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances. The Zoning Officer or Zoning Adjustments Board may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, antenna facilities have the potential to become an attractive nuisance. The design of the fencing and other access control devices shall be subject to design review.
 - H. Where appropriate and directly related to the applicant's placement, construction, or modification of wireless telecommunications facilities, the applicant shall maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, when used for screening unless the Design Review Planner or Design Review Committee approves appropriate replacement landscaping. Additional landscaping shall be planted as needed to minimize the visual impact of the facility and, when feasible, to block the line of sight between facilities and adjacent residential uses and residentially zoned properties. The Design Review Planner or Design Review Committee shall determine the appropriate minimum size of new trees and shrubs.
 - I. Facade-mounted equipment, not including any required screening, shall not project more than 18 inches from the face of the building or other support structure unless specifically authorized by the Zoning Officer or the Zoning Adjustments Board.
 - J. In order of preference, ancillary support equipment for facilities shall be located either within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the public right-of-way, unless the Zoning Officer or Zoning Adjustments Board finds that another location is preferable under the circumstances of the application.

Chapter 23C.17: Wireless Telecommunication Facilities

- K. Above ground and partially buried ancillary equipment, including support pads, cabinets, shelters, and buildings, shall be located where they will be the least visible from surrounding properties and the public right-of-way and shall be designed to be architecturally compatible with surrounding structures and/or screened using appropriate techniques to camouflage, disguise, and/or blend into the environment including landscaping, color, and other techniques to minimize their visual impact. If the Zoning Officer determines that an equipment cabinet is not or cannot be adequately screened from surrounding properties or from public view or architecturally treated to blend in with the environment, the equipment cabinet shall be placed underground or inside the existing building where the antenna is located unless the Zoning Officer or Zoning Adjustments Board finds that such placement is not feasible or consistent with the objectives of this Chapter and other applicable requirements.
- L. No telecommunications antenna or ancillary support equipment shall be located within any setback or between the face of a building and a public right-of-way without approval of a Use Permit except for facilities that are completely subterranean or Microcell facilities, the latter of which may be approved with an Administrative Use Permit.
- M. When antennas are co-located, the City may limit the number of antennas with related equipment and providers to be located at any site and adjacent sites in order to prevent negative visual impacts associated with multiple facilities. Architectural and other camouflaging treatment shall be coordinated between all users on each site.
- N. At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual and noise impacts as feasible.
- O. Proposed facilities shall not reduce the number of available parking spaces below the amount required pursuant to the Zoning Ordinance. (Ord. 7073-NS § 1, 2009)

Section 23C.17.080 Operation and Maintenance Standards

All wireless telecommunication facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to enforcement pursuant to provisions of this Chapter.

- A. Each owner or operator of a wireless telecommunications facility shall provide signage identifying the name and phone number of a party to contact in event of an emergency. The design, materials, colors, and location of signs shall be subject to design review. Contact information shall be kept current.
- B. Wireless telecommunications facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair, free from trash, debris, litter and graffiti and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than forty-eight (48) hours from the time of notification by the city.
- C. The owner or operator of a wireless telecommunications facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan. Amendments or modifications to the landscape plan shall be submitted to the Zoning Officer for approval.
- D. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays. All air conditioning units and any other equipment that may emit noise that would be audible from beyond the property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under Chapter 13.40. Backup generators shall only be operated

Chapter 23C.17: Wireless Telecommunication Facilities

during periods of power outages or for testing. At no time shall equipment noise from any source exceed the standards specified the Berkeley Community Noise Ordinance (BMC Chapter 13.40).

- E. All wireless telecommunications facilities providing service to the government or the general public shall be designed to meet the following requirements:
1. The exterior walls and roof covering of all above ground equipment shelters and cabinets shall be constructed of materials rated as nonflammable in the Berkeley Building Code.
 2. Openings in all above ground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the greatest extent feasible.
 3. Material used as supports for antennas shall be fire resistant, termite proof, and subject to all applicable requirements of the Uniform Building Code.
 4. Telecommunications antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible. Building-mounted facilities shall be anchored so that a quake does not dislodge them or tip them over. All equipment mounting racks and attached equipment shall be anchored so that a quake would not tip them over, throw equipment off their shelves, or otherwise damage equipment.
 5. All connections between various components of the wireless telecommunications facility and necessary power and telephone lines shall, to the greatest extent feasible, be protected against damage by fire, flooding, and earthquake. Reasonable measures shall be taken to keep wireless telecommunication facilities in operation in the event of a natural disaster.
- F. Vehicle and personnel access to sites for maintenance and repairs shall not be from residential streets or adjacent residential properties to the maximum extent possible. (Ord. 7073-NS § 1, 2009)

Section 23C.17.085 Public Information Requirements

- A. The Planning and Development Department shall maintain a map and inventory of all existing and proposed wireless telecommunication sites, which shall be available to members of the public and other interested parties for inspection.
- B. The inventory shall, at a minimum, include the following information:
1. Address of site;
 2. Number, type, power rating, and frequency range of all antennas at the site;
 3. Name of telecommunications carrier owning, operating, or leasing each antenna at the site;
 4. Date of most recent certification. (Ord. 7073-NS § 1, 2009)

Section 23C.17.090 Requirement for Certification of Facilities

- A. No wireless telecommunications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters. In order to ensure continuing compliance with all applicable emission standards, all wireless telecommunications facilities shall submit reports as required by this section. The City may require, at the operator's expense, independent verification of the results of any analysis. If an operator of a telecommunications facility fails to supply the required reports or fails to correct a violation of the Federal

Chapter 23C.17: Wireless Telecommunication Facilities

Communications Commission standard following notification, the Use Permit is subject to modification or revocation by the Zoning Adjustments Board following a public hearing.

1. Within forty five (45) days of initial operation or modification of a telecommunications facility, the operator of each telecommunications antenna shall submit to the Zoning Officer written certification by a licensed professional engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions. The engineer shall measure the radio frequency radiation of the approved facility, including the cumulative impact from other nearby facilities, and determine if it meets the FCC requirements. A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Zoning Officer. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The City may require, at the applicant's expense, independent verification of the results of the analysis.
 2. Prior to January 31 of every year, an authorized representative for each wireless carrier providing service in the City of Berkeley shall provide written certification to the City that each facility is being operated in accordance with the approved local and federal permits and shall provide the current contact information.
 3. Once every two years, at the operator's expense, the City may conduct, or retain an approved engineer to conduct, an unannounced spot check of the facility's compliance with applicable FCC radio frequency standards.
 4. In the event of a change in the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters, the operator of each wireless telecommunications facility shall be required to submit to the Zoning Officer written certification by a licensed professional engineer of compliance with applicable FCC radio frequency standards within 90 days of any change in applicable FCC radio frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards. If calculated levels exceed 50% of the FCC's MPE limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels. If calculated levels are not in compliance with the FCC's MPE limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current MPE limits shall be submitted to the Zoning Officer.
 5. If the Zoning Officer at any time finds that there is good cause to believe that a telecommunications antenna is not in compliance with applicable FCC radio frequency standards, they may require the operator to submit written certification that the facility is in compliance with such FCC standards.
- B. The owner or operator of any wireless telecommunications facility that was approved by the City before January 17, 2002, shall submit to the Zoning Officer, within six (6) months from the date of notification, written certification by an engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions. The engineer shall measure the radio frequency radiation of the approved facility, including cumulative impact from other nearby facilities, and determine if it meets the FCC requirements. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility is brought into compliance. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.
- C. Any facility that was approved by the City prior to January 17, 2002, and which does not comply with this chapter on the date of its adoption shall be considered a lawful non-conforming use; provided, that the owner or operator submits the information required in subsection B of this section. A lawful non-conforming personal wireless service facility shall be subject to the requirements of Chapter 23C.04 except to the extent that they are modified herein.

Chapter 23C.17: Wireless Telecommunication Facilities

- D. Failure to submit the information required in this section will be considered a violation of the Zoning Ordinance. Any facility found in violation may be ordered to terminate operations by the Zoning Adjustments Board following a duly noticed public hearing. (Ord. 7073-NS § 1, 2009)

Section 23C.17.100 Findings Required for Approval

- A. No wireless telecommunications facilities shall be located in any zoning district unless the Zoning Adjustments Board or the Zoning Officer approves a Use Permit or Administrative Use Permit pursuant to the findings set forth in this Section and in Sections 23B.28.050.A and 23B.32.040.A, as applicable. However, a finding under Sections 23B.28.050.A and 23B.32.040.A shall not be based on aesthetic impacts if the proposed facility would not be readily visible, or on any other matter that the City is prohibited from considering by the Telecommunications Act of 1996.
1. The Zoning Officer may approve an Administrative Use Permit for:
 - a. Microcell facilities in any zoning district,
 - b. Modifications to existing sites in non-residential zoning districts, and
 - c. Additions to existing sites in non-residential zoning districts when the site is not adjacent to a residential district.
 2. All other new or modified wireless telecommunications facilities shall require the approval of a Use Permit by the Zoning Adjustments Board except as provided in Sections 23B.56.020 and 23C.17.050D.
- B. In order to approve any Use Permit or Administrative Use Permit under this chapter, the Zoning Adjustments Board or the Zoning Officer must make the following findings:
1. that the proposed project is consistent with the general requirements of this chapter and any specific requirements applicable to the proposed facility;
 2. that the proposed antenna or related facility, operating alone and in conjunction with other telecommunications facilities, will comply with all applicable state and federal standards and requirements; and either:
 - a. will not be readily visible; or
 - b. will be readily visible, but it is not feasible to incorporate additional measures that would make the facility not readily visible;
 3. that the facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area, and is the least intrusive means of doing so. The findings in this subsection are not required for microcell facilities; and
 4. that the wireless carrier is in compliance with Section 23C.17.090 A1 and 2 of this ordinance. If a wireless carrier has not provided the information and certifications required by Section 23C.17.090A1 and 2, the wireless carrier may cure noncompliance by providing current contact information and certification statements for any sites which have been deemed to be not current.
- C. The Zoning Adjustments Board or the Zoning Officer may approve establishment of a satellite dish or parabolic antenna exceeding 39 inches in diameter, only after finding that a smaller or different antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible.
- D. All findings must be based on substantial information in the record such as, where required, technical analysis by an approved radio frequency engineer, calculations by a State-licensed structural engineer, or other evidence. (Ord. 7073-NS § 1, 2009)

Chapter 23C.17: Wireless Telecommunication Facilities

Section 23C.17.110 Cessation of Operations

- A. Within thirty (30) days of cessation of operations of any wireless telecommunications facility approved pursuant to this chapter, the operator shall notify the Zoning Officer in writing. The permit for said wireless telecommunications facility shall be deemed lapsed and of no further effect six (6) months thereafter unless:
1. The Zoning Officer has determined that the same operator resumed operation within six (6) months of the notice; or
 2. The City has received an application to transfer the permit to another operator.
- B. No later than thirty (30) days after a permit has lapsed under the preceding subsection, the operator shall remove all wireless telecommunication facilities from the site. If the operator fails to do so, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of Section 23C.17.050 to do so. If such facilities are not removed, the site shall be deemed to be a nuisance pursuant to Section 23B.64 and the City may call the bond to pay for removal.
- C. Failure to inform the Zoning Officer of cessation of operations of any existing facility shall constitute a violation of the Zoning Ordinance and be grounds for:
1. Prosecution;
 2. Revocation or modification of the permit;
 3. Calling of any bond or other assurance secured by the operator pursuant to the requirements of Section 23C.17.050; and/or
 4. Removal of the facilities.
- D. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility, shall provide written notification to the Zoning Officer and request transfer of the existing Use Permit. The Zoning Officer may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing Use Permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a State-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission and the California Public Utilities Commission. If the Zoning Officer determines that the proposed operation is not consistent with the existing Use Permit, they shall notify the applicant who may revise the application or apply for modification to the Use Permit pursuant to the requirements of Section 23B.56. (Ord. 7073-NS § 1, 2009)

Chapter 23C.18: Transportation Demand Management

Chapter 23C.18

TRANSPORTATION DEMAND MANAGEMENT

Sections:

23C.18.010	Purpose
23C.18.020	Applicability of Regulations
23C.18.030	Transportation Demand Management Program Requirements
23C.18.040	Monitoring, Reporting and Compliance

Section 23C.18.010 Purpose

The purpose of this chapter is to establish a Transportation Demand Management program that supports:

- A. City Transportation Element goals of reducing vehicle trips, encouraging public transit use and promoting bicycle and pedestrian safety, and
- B. City Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options. (Ord. 7751-NS § 3, 2021)

Section 23C.18.020 Applicability of Regulations

- A. The following types of projects must comply with the requirements of this Chapter:
 1. Residential projects, including the residential portion of mixed-use projects that include ten or more Dwelling Units that have not been issued a Building Permit by the effective date of this ordinance.
- B. The following types of projects shall be exempt from the requirements of this Chapter:
 1. Residential projects, including the residential portion of mixed-use projects, located in the following locations:
 - a. C-DMU Downtown Mixed Use District
 2. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions.
- C. Projects in the Southside Plan Area shall be exempt from the public transit benefit requirements in 23C.18.030 (B) (Ord. 7751-NS § 3, 2021)

Section 23C.18.030 Transportation Demand Management Program Requirements

Any project subject to this Chapter shall:

- A. Ensure that all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s);
- B. Offer at least one of the following public transit benefits, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. For projects that include 99 dwelling units or fewer, the project shall provide one public transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one public transit benefit for every

Chapter 23C.18: Transportation Demand Management

bedroom in each dwelling unit. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.

1. A monthly pass for unlimited local bus transit service; or
 2. A functionally equivalent public transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager; and
- C. Provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes. (Ord. 7751-NS § 3, 2021)

Section 23C.18.040 Monitoring, Reporting and Compliance

- A. For projects subject to this Chapter, prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in 23C.18.030 (C) and 23D.12.065 (A) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23C.18.030 (A) and 23C.18.030 (B) will be implemented.
- B. The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this Chapter.
- C. Property owners may be required to pay administrative fees associated with compliance with this ordinance as set forth in the City's Land Use Planning Fees schedule. (Ord. 7751-NS § 3, 2021)

Chapter 23C.19: Off-Street Parking Maximums for Residential Development

Chapter 23C.19

OFF-STREET PARKING MAXIMUMS FOR RESIDENTIAL DEVELOPMENT

Sections:

23C.19.010	Purpose
23C.19.020	Applicability of Regulations
23C.19.030	Off-street Parking Maximums
23C.19.040	Excess Off-street Parking

Section 23C.19.010 Purpose

The purpose of this chapter is to institute off-street parking maximums for residential development in order to achieve:

- A. City Transportation Element goals of reducing vehicle trips, encouraging public transit use and promoting bicycle and pedestrian safety,
- B. City Climate Action Plan goals of reducing private vehicle travel and promoting mode shift to more sustainable transportation options,
- C. Housing Element goals for developing housing at all affordability levels by limiting the amount of on-site vehicle parking allowed. (Ord. 7751-NS § 4, 2021)

Section 23C.19.020 Applicability of Regulations

- A. The provisions of this Chapter shall apply to new residential projects that have been issued a Building Permit by the effective date of this ordinance, including the residential portion of mixed-use projects, that include two or more Dwelling Units located on a parcel, any portion of which is located within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the *California Public Resources Code* or along a transit corridor with service at 15 minute headways during the morning and afternoon peak periods.
- B. The following project types shall be exempt from the provisions of this Chapter:
 1. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions.
 2. Projects located on a roadway with less than 26 feet in pavement width in the Hillside Overlay.
 3. Projects located in the Environmental Safety-Residential District. (Ord. 7751-NS § 4, 2021)

Section 23C.19.030 Off-street Parking Maximums

Any project subject to this Chapter shall not include off-street residential parking at a rate higher than 0.5 parking spaces per Dwelling Unit. (Ord. 7751-NS § 4, 2021)

Section 23C.19.040 Excess Off-street Parking

- A. Any request for off-street residential parking in excess of values specified in Section 23C.19.030 shall require an Administrative Use Permit.

Chapter 23C.19: Off-Street Parking Maximums for Residential Development

- B. In order to approve any Administrative Use Permit under this Chapter the Zoning Officer or Board shall make one the following Findings:
- (i) Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this Chapter, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area; or
 - (ii) The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking. (Ord. 7751-NS § 4, 2021)

Chapter 23C.20: EXEMPTIONS

Chapter 23C.20

EXEMPTIONS

Sections:

- 23C.20.010** **Exempted Accessory Uses**
- 23C.20.020** **Exempted Temporary Uses**
- 23C.20.030** **Exempted Temporary Structures**

Section 23C.20.010 **Exempted Accessory Uses**

- A. The renting of rooms and/or the providing of board in a dwelling unit to four (4) or fewer persons not living as a household is permitted by right as an accessory use in all residential districts, provided that:
 - 1. The rental of rooms is for periods of at least fourteen (14) days; and
 - 2. The rooms which are rented:
 - a. Are fully integrated within the dwelling unit such that they have interior access to the rest of the dwelling unit;
 - b. Do not have separate kitchen(s); and
 - c. Do not have separate street addresses assigned to such room(s).
 - 3. All requirements for off-street parking are met.
- B. The sale or donation of Non-Processed Edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts, provided that:
 - 1. Sales are directly to the end consumer of the Non-Processed Edibles;
 - 2. Sales-related activities take place between the hours of 8am and 8pm and are located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot;
 - 3. The sale of Non-Processed Edibles does not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
 - 4. The sale of Non-Processed Edibles does not involve more than ten customer visits to the premises in one day.
- C. Chair massage is permitted by right as an accessory use when incidental to a retail use in the C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R Districts, with no additional parking required.
- D. Notwithstanding any to the contrary, this Section does not permit a Commercial Use in a Residential District unless such a Use is specified in the regulations for the District. (Ord. 7258-NS § 1, 10/2/12: Ord. 7256-NS § 1, 7/31/12: Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.20: EXEMPTIONS

Section 23C.20.020 Exempted Temporary Uses

The following Temporary Uses are permitted as of right:

- A. The Use of a dwelling, School, Church, community center or other facility as a polling or voting place for an election conducted by the City or other government agency.
- B. The conducting of a garage, yard or rummage sale on a residential property or a block sale of several properties, with the limitation that the sale shall not exceed two (2) days and such sales are limited to one (1) sale in any month's period of time.
- C. Temporary sidewalk sales conducted adjacent to, and in conjunction with, an approved commercial retail lease space, when all other City regulations are met.
- D. The use of a property as temporary parking during football games in the University of California Memorial Stadium under the provisions of Ordinance # 2435-N.S. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.20.030 Exempted Temporary Structures

The following accessory and temporary structures are permitted by right as long as they do not alter the character of, and are in keeping with the purposes of each District in which they are located:

- A. The installation, maintenance, undergrounding or repair of lines, wires, poles or devices for the transmission of electricity, telephone/telecommunications or cable television; or of pipelines or conduits and appurtenances thereto for containing such wires or devices, or for the transportation of oil, gas, sewage or water, except that a Use Permit or Administrative Use Permit shall be secured for wireless telecommunication antennas, other than those located within the public right-of-way.
- B. The erection, for not more than the time period authorized in a valid building Permit, of temporary construction offices, scaffolding, utility connections, on-site construction material yards and/or debris containers. (Ord. 6671-NS § 4, 2001; Ord. 6478-NS § 4 (part), 1999)

Chapter 23C.22

SHORT-TERM RENTALS

Sections:

23C.22.010	Purposes
23C.22.020	Applicability
23C.22.030	Definitions
23C.22.040	Permit Required
23C.22.050	Operating Standards and Requirements
23C.22.060	Remedies

Section 23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

Section 23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to dwelling units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a unit with a No-Fault Eviction cannot operate Short-Term Rentals for five years unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are allowed in Accessory Buildings and in existing Accessory Dwelling Units (ADUs) unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization and Good Cause for Eviction Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date of this ordinance. (Ord. 7521-NS § 1 (part), 2017)

Section 23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

- A. "Adjacent Properties" mean the dwelling units abutting and confronting, as well as above and below, a dwelling unit within which a Short-Term Rental is located.

Chapter 23C.22: Short-Term Rentals

- B. "Host" means any Owner or Tenant Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers their Host Residence, or a portion thereof, as a Short-Term Rental. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.
- C. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the short-term rental period. In the case of a parcel comprised of a single primary unit and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if they are present in any unit on such parcel.
- D. "Hosting Platform" means a business or person that provides a means through which a Host may offer a dwelling unit, or portion thereof, for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange short-term rentals, whether the Short-Term Rental Transient pays rent directly to the Host or to the Hosting Platform.
- E. "Host Residence" means a Host's principal place of residence, as defined by whether the Host carries on basic living activities at the dwelling place and, whether such dwelling place is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency.
- F. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the dwelling unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.
- G. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.
- H. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.
- I. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, for less than 14 consecutive days. (Ord. 7521-NS § 1 (part), 2017)

Section 23C.22.040 Permit Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate for Short-Term Rental shall be required for each Host to operate a Short-Term Rental. (Ord. 7521-NS § 1 (part), 2017)

Chapter 23C.22: Short-Term Rentals

Section 23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section.

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined in subdivisions C, E and B of Section 23C.22.030.
2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section 23C.22.030. In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.
2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter 19.40).

D. Notification. Initial, one-time notification of the establishment of a Short-Term Rental by ZC and Business license shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host, Local Contact or other information.

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. Either the Host or Hosting Platform must pay the transient occupancy tax (TOT).

I. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter 19.40).

J. Payment of Taxes. The Host shall pay all City taxes and fees owed in a timely manner.

K. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter 9.04, and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request. (Ord. 7544-NS § 1, 2017; Ord. 7521-NS § 1 (part), 2017)

Chapter 23C.22: Short-Term Rentals

Section 23C.22.060 Remedies

- A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter 13.48). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.
- B. Violation of any provision of this Chapter is punishable as set forth in Chapters 1.20 and 1.28.
- C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.
- D. In any enforcement action, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
- E. Any resident of the City may bring a private action for injunctive relief to prevent or remedy a public nuisance as defined in this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute.
- F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.
- G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.
- H. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section 23C.22.060. (Ord. 7521-NS § 1 (part), 2017)

Chapter 23C.23: Percentage for Public Art on Private Projects

Chapter 23C.23

PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS

Sections:

23C.23.010	Purpose
23C.23.020	Applicability
23C.23.030	Exceptions
23C.23.040	Definitions
23C.23.050	General Requirements
23C.23.060	Required Permits
23C.23.070	In-Lieu Fee
23C.23.080	Administrative Regulations (Guidelines)

Section 23C.23.010 Purpose

The purpose of this Chapter is to establish a public art requirement for private developments in order to provide the following benefits to the community:

- Maintain Berkeley's art and culture for generations;
- Recognize the vital importance of the arts to the City as a whole;
- Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the City of Berkeley;
- Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate. (Ord. 7579-NS § 1 (part), 2017: Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.020 Applicability

- A. This Chapter applies in all zoning districts in the City.
- B. This Chapter applies to:
 1. New Multifamily residential projects of five or more Dwelling Units
 2. New Commercial structures
 3. New Industrial structures
- C. This Chapter applies to all construction of building additions exceeding 10,000 square feet. (Ord. 7579-NS § 1 (part), 2017: Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.030 Exceptions

This Chapter does not apply to the following project types:

- A. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60% of the units.
- B. Buildings with Religious Assembly Uses as defined in Section 23F.04.010 and Buildings with Arts and Cultural Uses. For purposes of this section, "Arts and Cultural Use" means buildings that have as their

Chapter 23C.23: Percentage for Public Art on Private Projects

primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.

- C. Transitional Housing. (Ord. 7579-NS § 1 (part), 2017: Ord. 7547-NS § 1, 2017: Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.040 Definitions

For purposes of this Chapter, the following definitions shall apply:

- A. "Artist" means an individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales. Members of the design team are not artists for On-Site Publicly Accessible Art projects. Individuals who have a conflict of interest, including a familial or financial relationship to the developer or design team, are not artists for On-Site Publicly Accessible Art projects.
- B. "Construction Cost" means the amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the Building Permit Fees section of the resolution establishing fees and charges as adopted by the City Council.
- C. "Developer" means a person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this Chapter.
- D. "On-Site Publicly Accessible Art" means an original work by an Artist, including, but not limited to, functional art integrated into the building, landscape, or element of infrastructure, including sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, textile, art glass, digital media art, video, earthworks and multi-media installation, that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
- E. "Guidelines" means the guidelines adopted by the City Council pursuant to Section 23C.23.080. (Ord. 7579-NS § 1 (part), 2017: Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.050 General Requirements

- A. Developers subject to this Chapter shall either:
1. Include On-Site Publicly Accessible Art valued at 1.75% of the Construction Cost. In the event the value of On-Site Publicly Accessible Art as installed is less than 1.75% of the Construction Cost, an amount equal to 80% of the difference in value shall be paid to the City as an in-lieu fee.
 2. Pay an in-lieu fee of 0.80% of the Construction Cost to the City as set forth in Section 23C.23.070. (Ord. 7579-NS § 1 (part), 2017: Ord. 7526-NS § 1, 2017: Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.060 Required Permits

On-Site Publicly Accessible Art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments. The process for identifying and securing required permits shall be set forth in the Guidelines. (Ord. 7579-NS § 1 (part), 2017: Ord. 7494-NS § 1 (part), 2016)

Chapter 23C.23: Percentage for Public Art on Private Projects

Section 23C.23.070 In-Lieu Fee

- A. Applicability. As an alternative to providing On-Site Publicly Accessible Art, the Developer may elect to pay an in-lieu fee to the City as set forth in this Section.
- B. Purpose. Any in-lieu fees paid to the City pursuant to this Chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. Amount of Fee. The in-lieu fee shall be 0.80% of the Construction Cost.
- D. Time of Payment of Fee. The in-lieu fee shall be paid at the same time as other building permit fees. (Ord. 7579-NS § 1 (part), 2017; Ord. 7494-NS § 1 (part), 2016)

Section 23C.23.080 Administrative Regulations (Guidelines)

- A. The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this Chapter.
- B. The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines. (Ord. 7579-NS § 1 (part), 2017; Ord. 7494-NS § 1 (part), 2016)

Chapter 23C.24: Accessory Dwelling Units

Chapter 23C.24

Accessory Dwelling Units

Sections:

23C.24.010	Applicability of Regulations
23C.24.020	Purposes
23C.24.030	Permit Procedures
23C.24.040	Repealed by Ord. 7683-NS.
23C.24.050	Repealed by Ord. 7683-NS.
23C.24.060	Repealed by Ord. 7683-NS.
23C.24.070	Repealed by Ord. 7683-NS.

Section 23C.24.010 **Applicability of Regulations**

The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay. (Ord. 7685-NS § 2 (part), 2020: Ord. 7683-NS § 2 (part), 2019: Ord. 7599-NS § 2 (part), 2018)

Section 23C.24.020 **Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure. (Ord. 7685-NS § 2 (part), 2020: Ord. 7683-NS § 2 (part), 2019: Ord. 7599-NS § 2 (part), 2018)

Section 23C.24.030 **Permit Procedures**

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22. (Ord. 7685-NS § 2 (part), 2020: Ord. 7683-NS § 2 (part), 2019: Ord. 7599-NS § 2 (part), 2018)

Section 23C.24.040 **Special Provisions**

Repealed by Ord. 7683-NS. (Ord. 7599-NS § 2 (part), 2018)

Section 23C.24.050 **Development Standards**

Repealed by Ord. 7683-NS. (Ord. 7599-NS § 2 (part), 2018)

Chapter 23C.24: Accessory Dwelling Units

Section 23C.24.060 Modification of Development Standards with an Administrative Use Permit

Repealed by Ord. 7683-NS. (Ord. 7599-NS § 2 (part), 2018)

Section 23C.24.070 Findings

Repealed by Ord. 7683-NS. (Ord. 7599-NS § 2 (part), 2018)

Chapter 23C.25: Cannabis Uses

Chapter 23C.25

Cannabis Uses

Sections:

23C.25.010	Cannabis Retail
23C.25.020	Commercial Cannabis Cultivation
23C.25.030	Cannabis Manufacturing, Testing Labs and Distribution
23C.25.040	Microbusinesses

Section 23C.25.010 Cannabis Retail

A. General

1. Cannabis Retailer, including Storefront Retailer, Delivery-Only Retailer, A-Retailer, and M-Retailer, is defined in Section 12.21.020.
2. An M-Retailer existing and authorized as of January 1, 2010 that does not comply with this Section may continue at its current medical cannabis dispensing location as a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary onto an adjacent parcel.
3. Cannabis Retailers in good standing with State and local regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location. Applications for a change of location shall be evaluated based on the requirements to operate a Cannabis Business effective at the time of the proposed change.

B. Storefront Retailers

1. Storefront Retailers are permitted in C-prefixed Districts with a Zoning Certificate, and must maintain compliance with Chapters 12.21 and 12.22 and security regulations that may be promulgated by the Chief of Police.
2. Storefront Retailers are subject to approval through the selection process set forth in Section 12.22.020.
3. Up to seven Storefront Retail permits may be issued, one of which is reserved for an Equity Candidate as defined in Section 12.21.020. This limit to the number of Storefront Retailers shall not be reconsidered for a period of three years from the effective date of this ordinance.
4. Expansion of an approved Storefront Retailer must comply with the development standards for the Zoning District in which it is located.
5. Storefront Retailers may operate as a Retail Storefront Microbusiness as defined in Chapter 12.21 subject to obtaining all required State and local licenses.
6. Buffers
 - a. Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.
 - b. Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.

Chapter 23C.25: Cannabis Uses

C. Delivery-Only Retailers

1. Seven Delivery-Only Retailers are permitted citywide, four of which shall be operated by Equity Businesses, and three of which shall be non-Equity Businesses.
2. Delivery-Only Retailers are subject to approval through the selection process set forth in Section 12.22.020.
3. Delivery-Only Retailers are permitted with a Zoning Certificate in C-prefixed Districts other than the C-N District.
4. Delivery-Only Retailers are permitted in the M District, shall be evaluated and regulated for Zoning purposes in the same way as Warehouse-Based Non-Store Retailers, and shall be subject to the numeric and buffer requirements set forth in this Section for Delivery-Only Retailers.
5. Delivery-Only Retailers may not be located within 300 feet of any School or City-operated community center or skate park.
6. Delivery-Only Retailers may not be located in a street-fronting tenant space in C-prefixed Districts.

D. Lounges

1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.
2. Lounges must comply with the operational standards established by the City's Department of Health, Housing and Community Services. (Ord. 7688-NS § 1 (part), 2020)

Section 23C.25.020 Commercial Cannabis Cultivation

- A. Commercial Cannabis Cultivation is defined in Chapter 12.21.
- B. Commercial Cannabis Cultivation is permitted with a Zoning Certificate in the M District, subject to the following limitations:
 1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.
 2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.
- C. The total citywide canopy area of Cannabis Cultivation Facilities is limited to 180,000 square feet.
 - a. No more than six Major Cannabis Cultivation Facilities are permitted.
 - b. The total canopy area of all Minor Cannabis Cultivation Facilities shall not exceed 48,000 sf plus any area not used by a Major Cannabis Cultivation Facility.
 - c. Separate spaces used by different licensees may be aggregated at the same location.
 - d. Commercial Cannabis Cultivation is prohibited outside of a building.
- D. Cannabis Nurseries, as defined in Chapter 12.21, are subject to the same regulations as Cannabis Cultivation Facilities.

Chapter 23C.25: Cannabis Uses

- E. Cannabis Cultivation Facilities shall comply with all regulations in Chapter 12.22, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.
- F. Cannabis Cultivation Facilities may not be located within 300 feet of a School or City-operated community center or skate park.
- G. No Major Cannabis Cultivation Facilities may be approved until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers. (Ord. 7688-NS § 1 (part), 2020)

Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution

- A. Cannabis Manufacturers, Testing Labs and Distributors shall be evaluated and regulated for Zoning purposes in the same way as comparable non-Cannabis uses, as follows:

Cannabis Use	Equivalent Non-Cannabis Use
Manufacturing, processing, food Preparation	Light Manufacturing
Testing labs	Testing Labs
Distribution	Wholesale Uses

- B. Cannabis Manufacturers, Testing Labs and Distributors may not be located within 300 feet of a School. (Ord. 7688-NS § 1 (part), 2020)

Section 23C.25.040 Microbusinesses

- A. Microbusinesses are defined in Chapter 12.21.
- B. Microbusinesses are subject to the development standards set forth in this Chapter for each use conducted on the premises, with the following exceptions:
- C. In cases where development standards and permit thresholds apply for different uses conducted on the premises differ, the more restrictive standards apply.
- D. Retail Nursery Microbusinesses
 1. For purposes of this Section, “Existing Nursery” means a legally established plant nursery in the City of Berkeley as of the adoption of this ordinance.
 2. Up to two Existing Nurseries may convert to Retail Nursery Microbusiness, either: 1) with a Zoning Certificate in C- and M-prefixed Districts if an Existing Nursery complies with the development standards set forth in the Zoning Ordinance and in this Chapter for each use conducted on the premises; or 2) subject to a Use Permit for the substantial expansion or change in character to non-conforming uses in R-prefixed Districts. Retail Nursery Microbusinesses are not subject to the numeric or canopy limitations of other Retailers or Cannabis Cultivators.
 3. Zoning Certificates and/or Use Permits shall be issued to Existing Nurseries on a first-come, first-served basis. The right to retain one of the allocated Zoning Certificates shall be determined based on the date

Chapter 23C.25: Cannabis Uses

of issuance of a concurrent Business License and establishing and continuously operating the business or, if a Use Permit is required, on the date the application for the Use Permit is deemed complete so long as the Use Permit is implemented with a Businesses License within 30 days of approval and establishing and continuously operating the business.

4. The 600-foot buffer required between Cannabis Retailers shall not apply between Storefront Cannabis Retailers and Retail Nursery Microbusinesses. (Ord. 7688-NS § 1 (part), 2020)

Chapter 23C.26: Urban Agriculture

Chapter 23C.26

Urban Agriculture

Sections:

23C.26.010	Purposes
23C.26.020	Applicability
23C.26.030	Urban Agriculture Uses and Levels of Discretion
23C.26.040	Thresholds
23C.26.050	Operation Standards
23C.26.060	Complaints

Section 23C.26.010 Purposes

The purposes of the Urban Agriculture related regulations contained in this Chapter is to provide the following benefits to the community:

- A. Support the local economy and increase access to fresh local produce;
- B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens; and
- C. Encourage the Berkeley Climate Action Plan Chapter 3, Policy C goal of supporting efforts to build more complete and sustainable local food production and distribution systems. (Ord. 7620-NS § 1 (part), 2018)

Section 23C.26.020 Applicability

- A. Urban Agriculture is a primary use and defined in Section 23F.04.010.
- B. Urban Agriculture shall be allowed in all zoning districts in the City except for ES-R. (Ord. 7620-NS § 1 (part), 2018)

Section 23C.26.030 Urban Agriculture Uses and Levels of Discretion

- A. Low-Impact Urban Agriculture (LIUA) meets all or falls below the thresholds listed in Section 23C.26.040, and is allowed by right with a Zoning Certificate.
- B. High-Impact Urban Agriculture (HIUA) does not meet one or more of the thresholds listed in Section 23C.26.040, and may be permitted by an Administrative Use Permit. (Ord. 7620-NS § 1 (part), 2018)

Section 23C.26.040 Thresholds

The levels of discretion for Urban Agriculture are based on the following thresholds:

- A. Maximum parcel size of 7,500 square feet.
- B. Maximum lot coverage of 20% for accessory structures and buildings, per definition of 'coverage area' in Section 23F.04.010.
- C. Hours of operation is 8:00 a.m. and 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.

Chapter 23C.26: Urban Agriculture

- D. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.
- E. Use of organic pesticides. (Ord. 7620-NS § 1 (part), 2018)

Section 23C.26.050 Operation Standards

- A. The growing, production, or sale of Urban Agricultural Products do not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- B. Sales and/or donations of Urban Agricultural Products grown and produced on-site are permitted.
- C. If selling or donating Urban Agricultural Products to the public, the Urban Agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- D. Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing or storage structures and all garbage shall be removed from the site weekly. Compost piles and containers must be set back at least 10 feet from residential buildings when an Urban Agriculture use abuts a residential use.
- E. Use of mechanized farm equipment is prohibited in residential districts and when the Urban Agriculture use abuts a residential use, with the following exceptions:
 - 1. Heavy equipment may be used initially to prepare the land for agriculture use.
 - 2. Landscaping equipment designed for household use is permitted.
 - 3. Equipment when not in use must be enclosed or otherwise screened from sight. (Ord. 7620-NS § 1 (part), 2018)

Section 23C.26.060 Complaints

Uses, activities or events associated with Urban Agriculture are subject to Chapters 23B.64 and 12.92 if found to be non-compliant with the provisions set forth in this chapter. (Ord. 7620-NS § 1 (part), 2018)

Chapter 23C.26: Urban Agriculture

Sub-Title 23D

PROVISIONS APPLICABLE IN ALL RESIDENTIAL DISTRICTS

Chapters:

23D.04	Lot and Development Standards
23D.08	Accessory Buildings and Structures
23D.10	Repealed by 7599-NS
23D.12	Off-Street Parking Requirements
23D.16	R-1 Single Family Residential District Provisions
23D.20	R-1A Limited Two-Family Residential District Provisions
23D.24	ES-R Environmental Safety-Residential District Provisions
23D.28	R-2 Restricted Two-Family Residential District Provisions
23D.32	R-2A Restricted Multiple-Family Residential District Provisions
23D.36	R-3 Multiple Family Residential District Provisions
23D.40	R-4 Multi-Family Residential District Provisions
23D.44	R-5 High Density Residential District Provisions
23D.48	R-S Residential Southside District Provisions
23D.52	R-SMU Residential Southside Mixed Use District Provisions

Chapter 23D.04

LOT AND DEVELOPMENT STANDARDS

Sections:

23D.04.010	Lot Requirements
23D.04.020	Height Limits for Main Buildings
23D.04.030	Yards and Building Separations for Main Buildings
23D.04.040	Lot Coverage
23D.04.050	Usable Open Space
23D.04.060	Screening Required for Garbage Cans and Utility Meters
23D.04.070	Pedestrian Walkway for Multiple Dwellings
23D.04.080	Special Building Feature Requirements for R-Lots

Section 23D.04.010 Lot Requirements

- A. No lot may be subdivided or reduced in size so as to create a lot which is less than the minimum lot size that is required in the District in which it is located.
- B. Any deed of conveyance, sale or contract to sell made contrary to the minimum lot size requirements of this Ordinance is voidable at the sole option of the grantee, buyer or person contracting to buy, their beneficiaries, personal representative or trustee in insolvency or bankruptcy within one year after the date of execution of the deed of conveyance, sale or contract.
- C. When two or more dwelling units are developed in conjunction with a common area in a residential condominium ownership arrangement, the dwelling units and the common area together will be treated as a single lot for the purposes of this Ordinance for the calculation of minimum lot size, yard, density, coverage, usable open space and off-street parking requirements.
- D. The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.
- E. The Zoning Officer shall designate the front, side and rear yards for main buildings for flag lots and irregular lots, in a manner to best protect light, air and privacy. The yard dimensions shall be as set forth in each District's provisions. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.020 Height Limits for Main Buildings

- A. In any residential District, the height limit for schools, buildings for Religious Assembly Use, hospitals and other public buildings permitted in such District shall not exceed the height limit permitted for that District.
- B. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television or other messages; and flag poles, skylights, solar energy equipment, and similar structures may be built to a greater height than the limit established for the District in which the building is located; except that an Administrative Use Permit shall be secured for wireless telecommunication antennas, other than those located within the public right-of-way. Chimneys, water tanks, heating and air conditioning equipment, vents, pipes and necessary mechanical roof appurtenances may exceed the Zoning Ordinance height requirements, but may not individually exceed three feet in width by four feet in length or the minimum height required by the Building Code, where applicable. These dimensions may be exceeded with an Administrative Use Permit.

Chapter 23D.04: Lot and Development Standards

- C. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an AUP, including, but not limited to, mechanical penthouses, elevator equipment rooms and cupolas, domes, turrets and other architectural elements which exceed a District’s height limit. No such projection shall represent more than 15% of the average floor area of all of the building’s floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than the mechanical needs of the building.
- D. Decks, railings, trellises, pergolas and other similar structures may be built above a roof but less than the residential addition height limit of the Residential District. These dimensions may be exceeded with an Administrative Use Permit. (Ord. 6949-NS § 1 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.030 Yards and Building Separations for Main Buildings

- A. All buildings shall be set back from the respective lot lines, and separated between one another, as required by the regulations for the underlying District. The distance between the surface of a building’s outer wall and the applicable lot line shall be used in computing whether a building conforms to the yard dimension requirements of this Ordinance; provided that certain architectural features of a main building may project into required yards as shown in the table below:

<i>Table 23D.04.030</i>				
Maximum Architectural Feature Projections into Yards (ft.)				
<u>Architectural feature</u>	Yard location			
	Front	Rear	Interior side*	Street side
Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment	2.5	2.5	1.5	2.5
Eaves, Cornices, Canopies, Awnings and Bay Windows	2.5	2.5	1.5	2.5
Solar Energy Equipment	See Section 23D.04.030.G			
Uncovered Porches, Balconies (not to exceed 25% of the length of a building), Decks (exceeding 30 inches above grade), Fire Escapes, Stairs and Landings	6	6	1.5	2.5
Wheelchair Lifts and Ramps	See Section 23D.04.030.A.2			
*A 3-foot minimum side yard is required (see Section 23D.04.030.A.1)				

- 1. No architectural feature of a main building may project into a required side yard adjoining an interior side lot line so as to reduce the minimum side yard distance to less than three feet, except as described below:
 - 2. Wheelchair ramps and lifts may reduce any interior side yard or rear yard setback, provided an AUP is obtained. Wheelchair ramps and lifts may reduce any front or exterior side yard, except that one side yard which contains a pedestrian pathway of at least three feet in width that provides access to the rear yard is maintained on the lot, and the following requirement is met:
 - a. The lift/ramp does not block access to or encroach into any required off-street parking space or driveway leading to such space; unless there is no other feasible location for the lift/ramp.
 - 3. Uncovered decks, porches, landings and stairs which exceed 30 inches in height at any point, not including railings, shall be subject to the yard setback requirements applicable to main buildings, except as allowed in Table 23D.04.030.
- B. In any Zoning District combined with the H District, yard setbacks and building separations may be reduced pursuant to an AUP, and subject to the finding set forth in Section 23E.96.090.B.

Chapter 23D.04: Lot and Development Standards

- C. An accessory building or structure, other than a subterranean structure, that is attached to or is within three feet of a wall of a main building, shall be considered a part of the main building for the purposes of yard requirements.
- D. The side yard requirements of this chapter, which are applicable to main buildings, may be modified, subject to an AUP and the following requirements:
 - 1. Each building is constructed on a separate contiguous lot;
 - 2. Each building satisfies the requirements of the Berkeley Fire Code and Berkeley Building Code;
 - 3. All other requirements of this Ordinance for the District in which such building group is constructed shall apply.
- E. The required building separation between two or more main buildings which are of different heights shall be that required for the number of stories in the tallest building.
- F. A subterranean structure may project into required front, side and rear yards, but not so as to extend closer than six feet to either of said lines, if:
 - 1. It is roofed;
 - 2. The roof elevation does not exceed three feet above the finished grade; and
 - 3. The roof of such a structure is landscaped and developed so as to qualify as usable open space as defined in this Ordinance.
- G. The Zoning Officer may issue an AUP for solar energy equipment to encroach into required yards if they find that:
 - 1. The modification of Ordinance requirements is necessary for installation of the solar energy equipment;
 - 2. The proposed structures and equipment are installed with the primary purpose to collect, store, and utilize solar energy; and
 - 3. The subject building conforms to the standards set forth in the Residential Energy Conservation Ordinance (RECO). (Ord. 6848-NS §4 (2005): Ord. 6667-NS §1 (2001): Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.040 Lot Coverage

- A. The calculation of area for lot coverage shall exclude uncovered decks, porches, landings and stairs, except that any deck on the roof of a building or accessory structure or over an enclosed space or paved ground area shall be included in such calculation.
- B. The area of the roof of a subterranean structure, when such a structure is not more than three feet above finish grade, shall be excluded from the calculation of area for lot coverage.
- C. Solar energy equipment in compliance with this chapter may exceed the maximum coverage area limit.
- D. Wheelchair ramps and lifts in compliance with this chapter may exceed the maximum coverage area limit. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.04: Lot and Development Standards

Section 23D.04.050 Usable Open Space

The area of each lot which is reserved for Usable Open Space purposes shall be for active or passive recreation use and shall be accessible to the occupants of the building, unless otherwise specified in individual District standards. In addition, such areas shall satisfy the following conditions.

- A. No area shall qualify as usable open space unless it has a minimum width and length of ten feet, except that no balcony area may be used to satisfy a usable open space requirement unless it has a minimum width and length of six feet and has at least one exterior side open and unobstructed except for required railings.
- B. No more than 50% of the total usable open space required may be satisfied by balconies.
- C. An area which is accessible and/or usable only by the occupants of a particular dwelling unit shall be used to satisfy the usable open space area requirements of only that particular dwelling unit.
- D. Except in the case of balconies, usable open space shall be at least 75% open to the sky.
- E. No area which exceeds 8% grade shall qualify as usable open space.
- F. At least 40% of the total area required as usable open space, exclusive of balconies above the first floor, shall be a landscaped area. For multiple dwelling uses, such landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.
- G. Any usable open space which is not planted shall be developed to encourage outdoor active or passive recreational use and shall include such elements as decks, sports courts, outdoor seating, decorative paved areas and walkways which do not serve as entrance walkways.
- H. Areas of the lot which do not qualify as usable open space and which are not designated as driveways, off-street parking spaces or required walkways, shall be retained as landscaped areas.
- I. No area designated for off-street parking and loading areas, service areas, driveways, required walkways or portions thereof or any features that are used for required access to dwelling units, shall be counted as satisfying any usable open space area requirement. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.060 Screening Required for Garbage Cans and Utility Meters

All garbage cans must be effectively screened from view from the public right-of-way and surrounding properties. For buildings with two or more units all utility meters must also be effectively screened from view from the public right-of-way and surrounding properties. (Ord. 6854-NS § 1 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.070 Pedestrian Walkway for Multiple Dwellings

All multiple dwellings shall have a walkway for pedestrian access from the public right-of-way to the building. Such walkway shall be unobstructed, separate, distinct and physically protected from any driveway or off-street parking spaces, by a landscaped strip with a minimum width of two feet. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.04.080 Special Building Feature Requirements for R-Lots

- A. Exterior lighting on a residentially zoned property shall satisfy the following conditions:
 - 1. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 - 2. Lights on motion sensors shall not be triggered by movement or activity located off the property on which the light is located. (Ord. 7424-NS § 1, 2015)

Chapter 23D.08: Accessory Buildings and Structures

Chapter 23D.08

ACCESSORY BUILDINGS AND STRUCTURES

Sections:

23D.08.005	Permitted Uses in Accessory Buildings and Structures
23D.08.010	Accessory Buildings & Structures May Exceed Limit with Use Permit
23D.08.020	Height Limits for Accessory Buildings or Structures
23D.08.030	Setback Requirements for Accessory Building or Structures
23D.08.040	Special Rebuilding/Replacement Provisions
23D.08.050	Maximum Building Length
23D.08.060	Fences and Other Accessory Structures

Section 23D.08.005 Permitted Uses in Accessory Buildings and Structures

A. Accessory Buildings

1. No Accessory Building may be constructed unless authorized by an AUP. A Zoning Certificate shall be required for alteration of an existing Accessory Building.
2. An Accessory Building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a Kitchen.
3. No Accessory Building may be rented except as a Short-Term Rental under Chapter 23C.22.
4. An Accessory Building may only be used as a Short-Term Rental when located on a lot with access from a roadway with a minimum 26 feet in pavement width, unless an AUP is approved.
5. Only one Accessory Building per parcel may be rented as a Short-Term Rental.

- B. An Accessory Structure shall include those detached structures, other than an Accessory Building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential Accessory Structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential Accessory Structures may include, but are not limited to, storage buildings, garages, sheds and other outbuildings. (Ord. 7522-NS § 1, 2017; Ord. 7426-NS § 1, 2015; Ord. 6763-NS § 2 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

- A. An Accessory Building or Accessory Structure that satisfies the requirements of this Ordinance is permitted, except in the ES-R District.
- B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section 23D.08.020.C, subject to a finding that the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties. (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.08.020 Height Limits for Accessory Buildings or Structures

- A. No accessory building or enclosed accessory structure may exceed ten feet in average height when any portion of the building or structure is within four feet of a lot line.

Chapter 23D.08: Accessory Buildings and Structures

- B. No accessory building or enclosed accessory structure may exceed 12 feet in average height when any portion of the building or structure is between four and ten feet of a lot line.
- C. No accessory building or enclosed accessory structure may exceed 24 feet in average height, unless a Variance is obtained. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.08.030 Setback Requirements for Accessory Building or Structures

- A. No accessory building or enclosed accessory structure located on an interior lot may be erected or expanded in a manner which encroaches upon the front half of the lot depth.
- B. No accessory building or enclosed accessory structure located on a through lot shall be erected or expanded so as to encroach upon that 25% of the lot portion that is nearest to either abutting street.
- C. No accessory building or enclosed accessory structure on a corner lot may be erected or expanded so as to project into the existing or required front yard to a greater extent than the setback existing or required on the adjacent lot, whichever is smaller; nor may it be located closer to either street line than the main building constructed on the subject lot.
- D. No accessory building or enclosed accessory structure that is within 75 feet of the front lot line may be erected or expanded so as to encroach closer than four feet to the side lot line, when abutting another lot. Any such building or structure which is located in excess of 75 feet from the front lot line such a building or structure may encroach closer than four feet to the side lot line subject to the fire isolation requirements, including setbacks and/or fire resistance wall requirements, of the Berkeley Building Code.
- E. No detached accessory building or enclosed accessory structure may be erected or expanded to be within five feet of an alley. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.08.040 Special Rebuilding/Replacement Provisions

- A. Notwithstanding the setback requirements set forth in this Chapter and the coverage area limitations set forth in each R-District, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure must have the same average height as the previous building or structure; otherwise an AUP is required.
- B. Such replacement structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing accessory structure.
- C. The demolition of any accessory building proposed for replacement under the provisions of the Section is subject to the Landmark Preservation Ordinance regulations, under BMC Chapter 3.24, as applicable. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.08.050 Maximum Building Length

No accessory building or enclosed accessory structure may be longer than 24 feet running generally parallel with the side lot line. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.08: Accessory Buildings and Structures

Section 23D.08.060 Fences and Other Accessory Structures

- A. Any fence, hedge, gate, pergola, trellis, arbor or retaining wall is subject to the following restrictions when located on a lot in, or on the zoning boundary line of, any residential District.
1. No fence, or portion of a fence, shall contain strands of barbed or razor wire, nor shall sharp or jagged glass, metal such as, but not limited to razor-spikes, or similar materials be attached to a fence when located on a lot in, or on the zoning boundary line of, any residential District.
 - a. No features of this type in an existing fence shall be expanded or repaired.
 - b. All existing non-conforming fence features of this type, with an adjusted market value of \$1500 or less, shall be removed within one year from the effective date of this section or within one year from the date such feature became non-conforming, whichever date is earlier.
 - c. All existing non-conforming fence features of this type, with an adjusted market value of more than \$1500, shall be removed within two years from the effective date of this section or within two years from the date such use became non-conforming, whichever date is earlier.
 - d. For purposes of this ordinance, the adjusted market value of the existing non-conforming fence feature shall be calculated as follows:
 - i. The "original cost" of the fence feature shall be calculated by reference to the likely cost of substantially similar fence features at the time the fence feature was initially installed plus the likely costs of installation at that time.
 - ii. The "original cost" shall be reduced by 10% for each year since the fence feature was installed, until the year that this ordinance becomes effective. This reduced cost shall be considered the "adjusted market value."
 - e. Where the property owner demonstrates that the period of time established in subsections b and c would be unreasonable as applied to a particular fence feature, the City may extend the period within which removal of such feature would be required, after weighing the harm to the public interest from continued maintenance of the fence and other relevant factors. Any such determination may be made in the course of the proceedings to abate pursuant to Berkeley Municipal Code Chapter 1.24.
 2. No fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may exceed six feet in height at any point (or, in the case of the ES-R District four feet), unless so authorized by an AUP. The height of any such fence or structure shall be determined by measuring the vertical distance from the lowest existing grade point within a three foot radius of any point of such fence or structure, to the highest point of such structure.
- B. No unenclosed accessory structure may be placed on the ground within a required setback, including but not limited to, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses and windmills, unless so authorized by an AUP.
- C. In the case of an unenclosed hot tub, jacuzzi or spa, whether located within or beyond a required setback, an AUP shall be required, and any pump shall be mounted and enclosed so that its sound is not audible over a property line of an adjacent lot. (Ord. 6771-NS § 2, 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.10: Repealed by Ord. 7599-NS

Chapter 23D.10

Repealed by Ord. 7599-NS

Chapter 23D.12: Off-Street Parking Requirements

Chapter 23D.12

OFF-STREET PARKING REQUIREMENTS

Sections:

23D.12.010	Purposes
23D.12.020	Applicability
23D.12.030	Off-site Parking
23D.12.040	Residential Off-street Parking Spaces Shall Conform to Traffic Engineering Requirements
23D.12.050	Number of Parking Spaces Required
23D.12.060	Joint Use of Off-street Parking Spaces
23D.12.065	Bicycle Parking
23D.12.070	Two or More Uses of a Building
23D.12.080	Site Location and Screening of Uncovered Parking Spaces and Driveways
23D.12.090	Parking Lot Standards

Section 23D.12.010 Purposes

The purposes of the parking regulations contained in this Chapter are:

- A. To efficiently allocate parking spaces in of the City.
- B. To regulate the provision of off-street parking spaces within the City.
- C. To reduce the amount of on-street parking of vehicles, thus increasing the safety and capacity of the City's street system. (Ord. 7751 § 5, 2021; Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.020 Applicability

- A. The requirements of this Chapter apply to all uses commenced hereafter, to all buildings and structures hereafter constructed or moved onto a lot in an R- District and to any modifications to existing uses and structures which enlarge or increase capacity, including, but not limited to, adding or creating dwelling units, guest rooms, floor area, seats or employees, except to the extent that provisions in the individual R- District provide otherwise.
- B. In addition, no building, structure, alteration, fence, landscaping or other site feature may be constructed, erected, planted or allowed to be established that would impede the access of a vehicle to any off-street parking space required under this Chapter.
- C. No Zoning Certificate or Use Permit may be granted, and no permit other than a Variance from the requirements of this Chapter may be issued or approved, for any use, building or structure, unless all requirements of this Chapter are met. (Ord. 7751 § 6, 2021; Ord. 7210-NS § 5, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.030 Off-site Parking

- A. Any required off-street parking space which is not located on the same lot with the structure or use it is to serve or is not located in a joint use of parking arrangement, must be located on land under the same ownership as the land on which the structure or use is located.
- B. Any off-street parking space required by this chapter must be located within 300 feet of the structure or use it is intended to serve. This distance shall be measured from the nearest off-street parking space provided to the nearest point of the lot on which the use or structure to be served is located. Measurement shall be along

Chapter 23D.12: Off-Street Parking Requirements

public or private rights-of-way available for pedestrian access from the structure or use to the parking space. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.040 Residential Off-street Parking Spaces Shall Conform to Traffic Engineering Requirements

- A. In addition to the requirements of this Ordinance, all off-street parking spaces, access driveways, circulation patterns and ingress and egress connections to the public right-of-way must conform to the City's Traffic Engineering requirements.
- B. The Traffic Engineer shall determine whether the size, arrangement and design of off- street parking spaces, access driveways, circulation patterns and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible and safe parking areas and are adequately integrated with the City's overall street pattern and traffic flows.
- C. Dimensional requirements and standards for off-street parking spaces, driveway and other access improvements and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and the Board. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.050 Number of Parking Spaces Required

- A. Off-street parking spaces for non-residential uses may not be reduced below or, if already less than may not be further reduced below, the requirements of this chapter for similar uses or structures. Off-street parking spaces for new residential uses may be reduced below the requirements of this Chapter with issuance of an AUP.
- B. If the expected demand for parking spaces is found to exceed the minimum requirement, additional off-street parking may be required as a condition of approval on a Permit.
- C. When the formula for determining the number of required off-street parking spaces results in a requirement of a fractional space, any fraction below one-half shall be disregarded and fractions including and over one-half shall be counted as requiring one parking space.
- D. Off-street parking space requirements may be satisfied by tandem off-street parking space(s) with the issuance of an AUP. (Ord. 7751 § 7, 2021; Ord. 7426-NS § 3, 2015; Ord. 6763-NS § 3 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.060 Joint Use of Off-street Parking Spaces

- A. The Zoning Officer may approve an AUP to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:
 - 1. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served; and
 - 2. The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
 - 3. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.

Chapter 23D.12: Off-Street Parking Requirements

- B. The Board may approve a Use Permit authorizing the off-street parking requirements for offices in R-4 or R-5 Districts to be supplied jointly with off-street parking facilities provided for multiple dwellings, if it finds:
 - 1. No more than 20 percent of the off-street parking spaces required for the multiple dwelling use will serve as required off-street parking for offices; and
 - 2. The off-street parking spaces to be jointly used are located on the same lot as the offices which they are to serve, or on property under the same ownership within 300 feet from such offices.
- C. A statement shall be recorded in the Office of the County Recorder that restricts the use of the property and designates the off-street parking that is to serve the other property. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking that is being provided in compliance with the requirements of the City, unless the restriction is removed by the City. Upon submission of satisfactory evidence either that other parking space meeting the requirements of this Ordinance has been provided or that the building or use has been removed or altered in use so as to not longer require the parking space, the City shall remove the restriction from the property. (Ord. 6794-NS § 1 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.065 Bicycle Parking

- A. For residential projects, including the residential portion of mixed-use projects, of five or more units, in all districts, bicycle parking shall be provided as follows:

Use	Long Term Parking ¹ Requirement	Short-Term Parking ¹ Requirement
Dwelling Units (1 to 4 units)	None required	None required
Dwelling Units (5 units or more)	1 space per 3 bedrooms	2, or 1 space per 40 bedrooms, whichever is greater
Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing)	2, or 1 space per 2.5 bedrooms, whichever is greater	2, or 1 space per 20 bedrooms, whichever is greater
¹ Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i> , or as subsequently amended by the Transportation Division.		

(Ord. 7751-NS § 8, 2021)

Section 23D.12.070 Two or More Uses of a Building

In the case of two or more uses in the same building, the total required off-street parking spaces shall be the sum of the requirements for the several uses computed separately. Off-street parking spaces for one use shall not be considered as providing required off-street parking spaces for any other use except to the extent joint use of parking spaces is permitted. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.080 Site Location and Screening of Uncovered Parking Spaces and Driveways

- A. One new off-street parking space in a side yard where none exists may be allowed by right. Such space must be constructed of a permeable surface unless it is determined to be infeasible by the Public Works Department or Office of Transportation. Vegetative screening shall be provided pursuant to this Section. Location of the space shall minimize impact on usable open space.

Chapter 23D.12: Off-Street Parking Requirements

- B. No portion of an off-street parking space may be located in a required front, street-side side yard, or rear yard unless such location is authorized by Section 23C.24.050.G, or an AUP, approved by the Traffic Engineer, and meets all of the requirements in this section.
- C. No off-street parking space shall be located closer than ten feet in horizontal distance from a door or a window of any building containing three or more dwelling units, which is located on the same or approximately the same level, unless authorized by an AUP. For the purposes of this section, a window whose bottom edge or point is more than six feet in vertical height from the level of the subject off-street parking space shall not be considered on the same or approximately the same level.
- D. The difference in elevation between an off-street parking space and the finished grade on adjacent areas of the lot shall not exceed five feet at any point. Where such difference in elevation is greater than three feet and the parking space is lower than finished grade, the space shall not be located closer than four feet to any lot line. Where the space is higher than finished grade it shall not be located closer than six feet to any lot line. This section does not apply to parking decks.
- E. All paved areas for off-street parking spaces, driveways and any other vehicle-related paving, except for pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide, must be separated from any adjacent rear or interior side lot line by a landscaped strip at least two feet wide, except that driveways spanning a side lot line which are designed to serve two (2) adjacent lots are not subject to the landscape strip requirements along that side lot line.
- F. Screening must be provided for two or more off-street parking spaces, or any parking space located partly or entirely within a required rear yard, in a manner that effectively screens parked vehicles from view from buildings and uses on adjacent, abutting and confronting lots. Such screening must consist of a continuous view-obscuring wood fence, masonry wall or evergreen hedge, not less than four feet, and not more than six feet in height, which may be broken only for access driveways and walkways.
- G. In the case of parking areas of four or more off-street spaces, the parking area must be separated from an adjacent rear or interior side lot line by a landscaped strip which averages at least four feet in width along the applicable property line.
- H. The total area of pavement devoted to off-street parking spaces, driveways and other vehicle-related paving shall not exceed 50% of any required yard area that runs parallel to and abuts a street.
- I. No driveway may exceed 20 feet in width at any property line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
- J. Driveways must be spaced at least 75 feet from one another, as measured along any continuous property line abutting a street for each lot in any residential District. (Ord. 7426-NS § 4, 2015; Ord. 6942-NS § 2 (part), 2006; Ord. 6848-NS § 5 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.12.090 Parking Lot Standards

- A. Unless specifically prohibited in an individual R- District, parking lots are permitted in any R- District only if authorized by a Use Permit, and in compliance with the requirements of this section.
- B. No sign of any kind, other than those designating the parking lot name, entrances, exits, or conditions of use, may be erected or maintained.
- C. All lighting fixtures must be oriented in a manner to direct the light away from adjacent lots.
- D. Suitable wheel bumpers must be provided to protect screening and adjacent property.
- E. No commercial repair work or service of any kind may be conducted on the lot.

Chapter 23D.12: Off-Street Parking Requirements

- F. The screening and landscaping of the lot must be in accordance with the provisions set forth in Section 23D.12.080.F-G.
- G. A durable and dustless surface must be provided and maintained and the lot must be graded to dispose of all surface water.
- H. The Board may waive any or all of the above conditions in the case of a temporary parking lot. (Ord. 7210-NS § 6, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.16: R-1 Single Family Residential District Provisions

Chapter 23D.16

R-1 SINGLE FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.16.010 Applicability of Regulations**
- 23D.16.020 Purposes**
- 23D.16.030 Uses Permitted**
- 23D.16.040 Reserved**
- 23D.16.050 Special Provisions: Addition of Bedrooms to Parcels**
- 23D.16.060 Reserved**
- 23D.16.070 Development Standards**
- 23D.16.080 Parking -- Number of Spaces**
- 23D.16.090 Findings**

Section 23D.16.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-1 Districts. In addition, the general provisions contained in Subtitle 23C shall apply. Where the H District overlays a property so as to be classified R-1(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.020 Purposes

The purposes of the Single Family Residential (R-1) Districts are to:

- A. Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;
- B. Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;
- C. Protect adjacent properties from unreasonable obstruction of light and air; and
- D. Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each Use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.16.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.16.080.A

Chapter 23D.16: R-1 Single Family Residential District Provisions

<i>Table 23D.16.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.16.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.16.050
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	In required setbacks
Exceed six ft. in height	AUP	
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II Class II in the Hillside Overlay	AUP Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

Chapter 23D.16: R-1 Single Family Residential District Provisions

<i>Table 23D.16.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:	UP(PH) -- Use Permit, public hearing required	
ZC -- Zoning Certificate	Prohibited -- Use not permitted	
AUP -- Administrative Use Permit		

(Ord. 7753-NS § 4, 2021; Ord. 7696-NS § 1, 2020; Ord. 7620-NS § 2, 2018; Ord. 7599-NS § 3, 2018; Ord. 7521-NS § 2, 2017; Ord. 7426-NS § 5, 2015; Ord. 7306-NS § 1, 2013; Ord. 7155-NS § 1, 2010; Ord. 7129-NS § 2, 2010; Ord. 6949-NS § 2 (part), 2006; Ord. 6909-NS § 2 (part), 2006; Ord. 6854-NS § 3 (part), 2005; Ord. 6763-NS § 4 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.040 Reserved

Reserved. (Ord. 7426-NS § 6, 2015; Ord. 6763-NS § 5 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms". (Ord. 7306-NS § 2, 2013)

Chapter 23D.16: R-1 Single Family Residential District Provisions

Section 23D.16.060 Reserved

Section 23D.16.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No Dwelling Unit may be established on a lot with an area of less than 5,000 square feet, except as specified in 23C.04.
- C. Each Main Building shall be limited in height as follows:

	Height limit average (ft.)	Stories limit (number)
Main Building	28*	3
All Residential Additions	14**	Not applicable
* The Zoning Officer may issue an Administrative Use Permit to allow Main Buildings to exceed 28 feet in average height, up to 35 feet in average height ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.		

- D. The Main Building shall be set back from the respective lot lines as follows:

<u>Stories (number)</u>	<u>Yard location</u>		
	<u>Front</u>	<u>Rear*</u>	<u>Side**</u>
1-3	20 ft.	20 ft.	4 ft.
*See Section 23D.16.070.D.1 **See Sections 23D.16.070.D.2 and D.3			

- 1. When the depth of any lot is less than 100 feet, the Rear Yard may be reduced to 20% of the lot depth.
- 2. When the width of any lot is less than 40 feet, the width of each Side Yard may be reduced to 10% of the lot width, but in no case to less than three feet.
- 3. The side yards on a corner lot shall be as follows:
 - a. On a corner lot, where there is a key lot to the rear thereof, the street side yard of the corner lot shall be not less than one-half the Front Yard required or existent on the key lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the side yard to be in excess of ten feet.
 - b. Where a rear yard of not less than 50 feet in depth is maintained on a corner lot, adjacent to a key lot, the side yard may be reduced to four feet.
- E. Maximum lot coverage may not exceed 40% of the lot area.
- F. Each lot shall contain minimum usable open space area for each Dwelling Unit, including Accessory Dwelling Units: 400 square feet. (Ord. 7599 § 4, 2018; Ord. 6949-NS § 3 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.16: R-1 Single Family Residential District Provisions

Section 23D.16.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.16.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

- B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.
- C. Schools having a total gross floor area exceeding 10,000 square feet shall provide off-street loading spaces at the rates of:
1. One space for the first 10,000 square feet of gross floor area; and
 2. One additional space for each additional 40,000 square feet of gross floor area. (Ord. 7751-NS § 9, 2021; Ord. 7599-NS § 5, 2018; Ord. 7426-NS § 7, 2015; Ord. 6854-NS § 4 (part), 2005; Ord. 6763-NS § 6 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 8, 2015; Ord. 6980-NS § 1 (part), 2007; Ord. 6763-NS § 7 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

Chapter 23D.20

R-1A LIMITED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.20.010 Applicability of Regulations**
- 23D.20.020 Purposes**
- 23D.20.030 Uses Permitted**
- 23D.20.040 Reserved**
- 23D.20.050 Special Provisions: Addition of Bedrooms to Parcels**
- 23D.20.060 Reserved**
- 23D.20.070 Development Standards**
- 23D.20.080 Parking -- Number of Spaces**
- 23D.20.090 Findings**

Section 23D.20.010 Applicability of Regulations

The regulations contained in this Chapter shall apply in all R-1A Districts. In addition, the general provisions contained in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.020 Purposes

The purposes of the Limited Two-family Residential Districts (R-1A) are to:

- A. Recognize and protect the existing pattern of low medium density residential areas characterized by reasonable open and spacious type of development in accordance with Master Plan Policy;
- B. Protect adjacent properties from unreasonable obstruction of light and air;
- C. Allow flexibility in the use of property for residential purposes by permitting two Dwelling Units on one lot under limited conditions.
- D. In those portions of the District west of San Pablo Avenue, appropriately regulate the rear and side yards for the construction of a Dwelling Unit. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.030 Uses Permitted

The following table sets forth the permits required for each listed item. Each Use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.20.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes		
Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Community Centers	UP(PH)	

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

<i>Table 23D.20.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Dwelling Units, Single-family or Duplex, subject to R-1A Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.20.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.20.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.20.050
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required yards
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

<i>Table 23D.20.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		UP(PH) -- Use Permit, public hearing required
ZC -- Zoning Certificate		Prohibited -- Use not permitted
AUP -- Administrative Use Permit		

(Ord. 7753-NS § 5, 2021; Ord. 7696-NS § 2, 2020; Ord. 7620-NS § 3, 2018; Ord. 7599-NS § 6, 2018; Ord. 7561-NS § 1, 2017; Ord. 7521-NS § 3, 2017; Ord. 7426-NS § 9, 2015; Ord. 7306-NS § 3, 2013; Ord. 7155-NS § 2, 2010; Ord. 7129-NS § 3, 2010; Ord. 6949-NS § 4 (part), 2006; Ord. 6909-NS § 3 (part), 2006; Ord. 6854-NS § 5 (part), 2005; Ord. 6763-NS § 8 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.040 Reserved

Reserved. (Ord. 7426-NS § 10, 2015; Ord. 6763-NS § 9 (part), 2003)

Section 23D.20.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms". (Ord. 7306-NS § 4, 2013)

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

Section 23D.20.060 Reserved

Section 23D.20.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than two Dwelling Units shall be allowed. In order to establish two Dwelling Units a lot must contain at least 4,500 square feet of area.
- C. Each Main Building shall be limited in height as follows:

	<u>Average Height limit (ft.)</u>	<u>Maximum Stories limit (number)</u>
Main Building	28*	3
Rear Main Building	22	2
All Residential Additions	14**	Not Applicable

* The Zoning Officer may issue an Administrative Use Permit to allow a Main Building to exceed 28 feet in average height, up to 35 feet in average height.
 ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to a Main Building to exceed 14 feet in average height, up to the district limit, and a Rear Main Building up to 22 feet in average height.

- D. A Main Building shall be set back from the respective lot lines as follows:

	<u>Stories (number)</u>	<u>Yard location</u>			Building separation between Main Buildings***
		<u>Front</u>	<u>Rear*</u>	<u>Side**</u>	
Main Building	1-3	20 ft.	20 ft.	4 ft.	1 story – 8 feet
Rear Main Building	1-2	N/A	20 ft.	6 ft.	2 stories – 12 feet 3 stories – 16 feet
* See Sections 23D.20.070.D.1. and D.4 ** See Sections 23D.20.070.D.2, and D.3 *** See Section 23D.20.070.D.5					

- 1. When the depth of any lot is less than 100 feet, the Rear Yard may be reduced to 20% of the lot depth.
- 2. When the width of any lot is less than 40 feet, the width of each Side Yard for a Main Building may be reduced to 10% of the lot width, but in no case to less than three feet. No Side Yard setback reductions are permitted for Rear Main Buildings.
- 3. The Side Yards on a Corner Lot shall be as follows:
 - a. On a Corner Lot, where there is a Key Lot to the rear thereof, the street Side Yard of the Corner Lot shall be not less than one-half the Front Yard required or existent on the Key Lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the Side Yard to be in excess of ten feet.
 - b. Where a Rear Yard of not less than 50 feet in depth is maintained on a Corner Lot, adjacent to a Key Lot, the Side Yard may be reduced to the Side yard standards as defined in Section 23D.20.070.D.
- 4. The required Rear Yard may be reduced to no less than 12 feet to construct a second Dwelling Unit, subject to obtaining an Administrative Use Permit.

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

- 5. For two Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.
- E. Maximum coverage may not exceed the following percentages:
 - 1. 40% of the lot area for an Interior or Through Lot.
 - 2. 45% of the lot area for a Corner Lot.
- F. Each lot shall contain the following minimum usable open space area for each Dwelling Unit: 400 square feet. (Ord. 7593-NS § 1, 2018; Ord. 6949-NS § 5 (part), 2006; Ord. 6806-NS § 1, 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.20.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

- B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.
- C. Schools having a total gross floor area exceeding 10,000 square feet shall provide off-street loading spaces at the rates of:
 - 1. One space for the first 10,000 square feet of gross floor area; and
 - 2. One additional space for each additional 40,000 square feet of gross floor area. (Ord. 7751-NS § 10, 2021; Ord. 7599-NS § 7, 2018; Ord. 7426-NS § 11, 2015; Ord. 7323-NS § 5, 2014; Ord. 6763-NS § 10 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.090 Findings

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

- C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties. (Ord. 7593-NS § 2, 2018: Ord. 7426-NS § 12, 2015: Ord. 6980-NS § 2 (part), 2007: Ord. 6763-NS § 11 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

Chapter 23D.24

ES-R ENVIRONMENTAL SAFETY-RESIDENTIAL DISTRICT PROVISIONS

Sections:

23D.24.010	Applicability of Regulations
23D.24.020	Purposes
23D.24.030	Uses Permitted
23D.24.040	Specific Plan Required
23D.24.050	Environmental Assessment Required
23D.24.060	Reserved
23D.24.070	Development Standards
23D.24.080	Parking -- Number of Spaces
23D.24.085	Projects in the Panoramic Hill Historic District
23D.24.090	Findings Required

Section 23D.24.010 Applicability of Regulations

The regulations in this Chapter shall apply to all areas mapped and identified as being within the Environmental Safety-Residential (ES-R) District. In addition, the general provisions contained in Sub-title 23C shall apply. The ES-R District is not subject to the (H) or Hillside District provisions. Nothing in this Chapter is intended or may be construed to overturn, nullify or affect any recorded limitation of property in favor of the City. When there is any conflict between this Chapter and other provisions of this Title, the more restrictive standards shall apply. (Ord. 7135-NS § 2 (part), 2010: Ord. 6478-NS § 4 (part), 1999)

Section 23D.24.020 Purposes

Because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards. Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition. The specific purposes of the Environmental Safety-Residential (ES-R) Districts are to:

- A. Provide a means to implement the policies of the Berkeley General Plan and the Berkeley Hazard Mitigation Plan to reduce the potential for life loss, injury and economic damage to Berkeley residents from earthquakes, wildfires, and landslides and to protect the City's unique character and values from being compromised by hazard events by reducing the vulnerability of one of the most unique and inaccessible neighborhoods in the Hill Hazardous Fire Area;
- B. Protect the lives and property of Panoramic Hill residents in Berkeley and adjoining parts of Oakland and avoid destruction or damage to the natural environment through the application of special development regulations and by ensuring that the review of new development and alterations or additions to existing structures will require analysis and mitigation of geologic, seismic, and fire hazards;
- C. Limit the uses of land permitted to those which are necessary to serve the housing and access needs of the District's inhabitants and will not put either current or future residents at risk due to the area's inadequate infrastructure and special vulnerability to natural hazards;
- D. Protect the health and safety of current and future residents by ensuring that no new dwelling units will be built and no land may be subdivided to allow the construction of additional dwelling units until plans are in place that identify the future distribution, location, and extent of development in the Berkeley and Oakland neighborhoods of Panoramic Hill including provisions to develop and maintain a system of public facilities and services adequate to meet the needs of the future population;

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

- E. Establish procedures to ensure that the development review process provides for consideration of the cumulative impact of new construction, alterations, and changes in use that have the potential to increase the population or intensify the use of land in the District together with the impacts of other projects on Panoramic Hill and within adjacent areas of Berkeley and Oakland;
- F. Restrict the size and occupancy of residential structures by imposing standards that reflect the District’s limited capacity to accommodate additional population due to poor access, inadequate infrastructure, vulnerability to natural hazards and the fact that a majority of the existing development does not conform to standards that the City adopted in 1979;
- G. Assure the effective use of emergency measures available to save lives and property;
- H. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;
- I. Protect the integrity of the Panoramic Hill Historic District by ensuring that alterations to existing buildings and new construction maintain the existing pattern of development, are appropriate to the hillside setting, and do not impair the architectural significance of contributing structures. (Ord. 7135-NS § 2 (part), 2010: Ord. 6478-NS § 4 (part), 1999)

Section 23D.24.030 Uses Permitted

A. The following table sets forth the Permits required for each listed item. Each Use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited.

<i>Table 23D.24.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Community Care Facilities/Homes Six or fewer residents Changes of Use New Construction Seven or more residents	ZC UP(PH) Prohibited	Permitted pursuant to State Health and Safety Code Sec. 1566.3 et seq. when occupying a legally established existing single-family dwelling. New construction subject to ES-R standards.
Dwelling Units, Single-family Alterations to create bedrooms*	UP(PH) AUP	Subject to ES-R standards If the existing structure is a single-family detached home on a single lot and subject to requirements in Sections 23D.24.070 and 23D.24.080
Residential Additions (up to 10% of lot area or 200 square feet, whichever is more restrictive) Major Residential Additions	ZC UP (PH)	See Section 23D.24.070 for restrictions. See definition in Sub-title 23F. Denial subject to Section 23D.24.090.B.
Parks and Playgrounds	UP(PH)	
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

<i>Table 23D.24.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures		
Under 100 sq. ft.	ZC	Must satisfy the requirements of Chapter 23D.08
100 or more sq. ft.	UP(PH)	If has either habitable space and/or exceeds the requirements of Chapter 23D.08
Located on a vacant lot without a Main Building	UP(PH)	
Accessory Dwelling Units	Prohibited	
Child Care: Family Daycare Homes (Small or Large)	ZC	
Fences		
Four ft. or less in height	ZC	
Exceeding four ft. in height	AUP	Subject to Fire Department review and comment
Home Occupations Class I	ZC	Subject to the requirements of Chapter 23C.16
Hot Tubs, Jacuzzis, Spas or Swimming Pools	UP(PH)	See Section 23D.08.060.C
Rental of Rooms	UP(PH)	Not to exceed four persons. Occupancy of a single dwelling unit by a single household as defined in Sub-title 23F is permitted
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
<p>*"Bedroom" means any habitable space in a dwelling unit or residential accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and that is at least 70 square feet in area. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.</p>		
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 23, 2021; Ord. 7696-NS § 3, 2020; Ord. 7155-NS § 3, 2010; Ord. 7135-NS § 2 (part), 2010; Ord. 6949-NS § 6 (part), 2006; Ord. 6854-NS § 6 (part), 2005; Ord. 6763-NS § 12 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

Section 23D.24.040 Specific Plan Required

No Permit under this Title or parcel or tentative map under Title 21 may be approved to allow the establishment of any new residential unit until the City Council has adopted a specific plan in compliance with applicable law that shows the proposed distribution, location, and extent of land uses in the ES-R zone and the location and extent of the public facilities and services required to serve the land uses described in the Panoramic Hill Specific Plan (the Plan).

- A. The Plan shall, at a minimum, include proposals for water, wastewater, and stormwater systems and for a circulation system adequate to accommodate projected traffic and to provide emergency access to the ES-R District and a program of implementation actions including finance measures necessary to carry out those proposals.
- B. The Plan shall include consideration of the needs and future growth of adjacent areas in the City of Oakland that are now or can feasibly be served by the proposed facilities and services. (Ord. 7135-NS § 2 (part), 2010)

Section 23D.24.050 Environmental Assessment Required

Due to Panoramic Hill's inadequate infrastructure and special vulnerability to natural hazards, a project that is ordinarily insignificant in its impact on the environment may be significant if it occurs in this district. Therefore, any discretionary entitlement under this Title or Title 21 will not be considered exempt from environmental review pursuant to the California Environmental Quality Act, with the exception of alterations to create bedrooms and residential additions up to the lesser of 10% of lot area or 200 square feet, and which otherwise meet all applicable standards of this chapter. Environmental review shall be based on documentation in the record including the following reports where applicable. Environmental review shall include consideration of the cumulative impact of new construction, alterations, and changes in use that would result in intensification of land use in combination with other projects on Panoramic Hill and adjacent areas that affect conditions in the area. For purposes of this chapter any project that increases habitable floor area, increases the size or number of sleeping rooms, or has the potential to increase vehicular trips in the area shall be considered an intensification of land use.

- A. All applications for construction and development in the ES-R zone except for the foregoing exceptions to the requirements of this section shall require the following special studies:
 1. New Construction. All new construction shall require a soils report, a geologic report, and a traffic impact study subject to the requirements of subdivisions B, C and D.
 2. Additions and Accessory Structures. All new accessory structures and additions to existing structures that require the installation of a foundation shall require a soils report, subject to the requirements of subdivision B. The Building Official may waive this requirement for additions including less than 50 square feet of gross floor area or detached non-habitable structures including less than 225 square feet of gross floor area.
- B. Soils Report. A soils report, based upon adequate test borings or excavations, shall be prepared by a civil engineer registered with the State of California, subject to the following requirements:
 1. Contents. The soil report shall assess the potential for landslides, ground shaking, and surface faulting. If the soil report indicates the presence of soil conditions which, if not corrected, could lead to structural defects, the report shall recommend corrective action that is likely to prevent structural damage to each structure proposed to be constructed.
 2. Review of Report. The soil report shall be reviewed and approved by the City prior to issuance of any discretionary permit under the zoning ordinance, or prior to issuance of a building or grading permit should a discretionary permit not be required. The City may have the soil report independently reviewed by a licensed geotechnical engineer, registered by the state of California, the cost of which shall be borne

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

by the applicant. The recommended action shall be incorporated in the construction of each structure as a condition to the issuance of any building permit.

- C. **Geologic Report.** A geologic report in compliance with the Alquist-Priolo Earthquake Fault Zoning Act and related regulations, shall be prepared by a certified engineering geologist. The report shall identify, describe and illustrate, where applicable, potential hazards of surface fault rupture, seismic shaking, liquefaction or landslide and shall, at a minimum, include:
1. **Review Conditions.** A review of the local and regional seismic and other geological conditions that significantly affect the proposed use.
 2. **Assessment.** An assessment of conditions on or near the site that would contribute to the potential for damage to a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk or liquefaction potential.
 3. **Recommendations.** Recommended building techniques, site preparation and mitigation measures, or setbacks necessary to reduce risks to life and structural damage to property from seismic damage, landslide, groundwater and liquefaction to insignificant levels.
- D. **Traffic Impact Study.** A traffic study shall be prepared by a qualified traffic engineer or transportation planner for any project that may generate new trips.
1. **Content.** The report shall identify, describe, and illustrate traffic, parking, and roadway conditions in the project vicinity including design characteristics, topography, parking and traffic regulation, accident rates, and pavement condition and width.
 2. **Assessment.** How the project will affect traffic operations and emergency access based on the size, use, and location, and the proposed site design including driveway locations, turn movements to and from the project site, surrounding uses, locations of nearby intersections, and potential to create unsafe traffic conditions.
 3. **Recommendations.** Recommended measures to reduce the project's impact on traffic safety including site design, location of parking and driveways, and off-site improvements necessary to ensure that the project would not exacerbate traffic safety problems in the area. (Ord. 7135-NS § 2 (part), 2010)

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

Section 23D.24.060 Reserved

Section 23D.24.070 Development Standards

- A. No lot of less than 25,000 square feet may be created.
- B. The maximum allowable gross floor area for a Dwelling Unit shall not exceed 30% of the total lot area, except as provided below:
 - 1. A legally created lot that contains less than 25,000 square feet may be developed in compliance with the requirements of this chapter; provided, that, on the effective date of the regulations that made it substandard, it was in single ownership separate from any abutting lot under the same ownership.
 - 2. Lots containing less than 5,000 square feet shall be allowed no more than one Dwelling Unit of no more than 1,000 square feet of gross floor area.
- C. Each Main Building shall be limited in height as follows:

	Height limit average (ft.)		<u>Stories limit (number)</u>
	<u>Avg</u>	<u>Max</u>	
Main Building	24*	35*	2
All Residential Additions	14**	Not Applicable	Not Applicable
*Main Buildings may exceed the 24-foot average height limits, subject to obtaining a Use Permit and the required finding under Section 23D.24.090.C. ** The Zoning Adjustments Board may issue a Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.			

- D. The Main Building shall be set back from the respective lot lines as follows:

<u>Stories (number)</u>	<u>Yard location</u>		
	<u>Front*</u>	<u>Rear*</u>	<u>Side*</u>
1-2	20 ft.	20 ft.	15 ft.
*Any yard may be reduced subject to obtaining a Use Permit, subject to Fire Department review and approval of the proposal with respect to fire safety, and the required finding under Section 23D.24.090.C.			

- 1. No building shall be situated closer than 30 feet to any building on an adjacent lot, unless a Use Permit is obtained, subject to Fire Department review and approval of the proposal with respect to fire safety, and the required finding under Section 23D.24.090.B.
- 2. If a lot contains less than 5,000 square feet, no yard abutting a property under different ownership may be reduced.
- E. Maximum lot coverage may not exceed 30% of the lot area.
- F. Each lot shall contain at least 400 square feet of Usable Open Space area for each Dwelling Unit. (Ord. 7135-NS § 2 (part), 2010: Ord. 6949-NS § 7 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

Section 23D.24.080 Parking -- Number of Spaces

A. A lot shall contain, for each of the following Uses, the following minimum number of Off-street Parking Spaces:

Table 23D.24.080

Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Dwellings, no room rental	One per 1,000 sq. ft. of gross floor area or one per bedroom, whichever is greater, with a minimum of two spaces to a maximum of four spaces*
Employees	One per two non-resident employees for a Community Care Facility**
Rental of Rooms	One per each roomer or boarder in addition to the above requirement for dwellings
<p>*For purposes of calculating required parking, "bedroom" means any habitable space in a dwelling unit or residential accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and that is at least 70 square feet in area. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of computing parking requirements. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. The division of existing habitable space shall not require the provision of additional parking so long as there is no net increase in the gross floor area of the building and no more than one additional bedroom is created.</p> <p>**This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single-family residence.</p>	

B. Any use that was lawfully established prior to the effective date of the ordinance codified in this chapter but does not conform to the requirements of this section may be continued and maintained, provided there is no increase in the area, space, or volume occupied by or devoted to such use. The lawfully established gross floor area of a single-family detached structure that does not conform to the parking requirements in subsection A may, however, be increased by a cumulative total of no more than 200 square feet over the floor area that existed on the effective date of the ordinance codified in this chapter if the addition or alteration complies with all other applicable standards and will not be used as a bedroom and if no portion of the building or any other structure on the same lot is used for rental rooms. (Ord. 7135-NS § 2 (part), 2010; Ord. 6478-NS § 4 (part), 1999)

Section 23D.24.085 Projects in the Panoramic Hill Historic District

A. Before the Zoning Officer or the Zoning Adjustments Board may take action on any Permit for a project within the Panoramic Hill Historic District that involves new construction, exterior alteration, or demolition, the Zoning Officer shall submit the application to the Landmarks Preservation Commission for review and an advisory recommendation. The purpose of this review is to ensure that proposed buildings, structures, landscaping, and other architectural and site design features are compatible with the design and appearance of existing buildings and structures in the Historic District that have established and contribute to its significant character. This requirement is in addition to but does not supersede any authority or responsibility the Commission has pursuant to Chapter 3.24 of the Municipal Code.

B. Any project in the Panoramic Hill District that requires the expansion of existing parking area or structure or the creation of additional parking to comply with the requirements of Section 23D.24.080 shall require approval of an Administrative Use Permit. (Ord. 7135-NS § 2 (part), 2010)

Section 23D.24.090 Findings Required

A. No Permit to establish a dwelling unit under this Title or parcel map or tentative map under Title 21 may be approved within the ES-R district until a Specific Plan has been prepared and approved consistent with the

Chapter 23D.24: ES-R Environmental Safety-Residential District Provisions

requirements of Section 23D.24.040 and State law and the Zoning Adjustments Board has found the proposed development project consistent with the provisions of the approved Specific Plan.

- B. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040 as well as the following findings to the extent applicable:
1. To approve an increase in building height: The increased height is justified due to the topography of the site and is consistent with the purposes of this District.
 2. To approve a reduction in yard setbacks: The yard reduction is necessary to allow economic use of property due to the size, shape of the lot or the topography of the site, and such reduction is consistent with the purposes of this District.
 3. To approve a reduction in the 30-foot building spacing requirement: The reduction is necessary to allow economic use of the property for residential purposes, the development complies with all other applicable setback, coverage, and floor requirements, and the reduction in the required distance is in conformity with the purposes of this District.
 4. To approve the establishment of a new residential unit or a parcel or tentative map under Title 21 that would allow development of additional dwelling units: The public facilities and services that the Specific Plan requires have been provided or will be developed as a condition of approval of such use permit, parcel map, or tentative map.
 5. To approve any project that increases habitable floor area, increases the size or number of bedrooms, may increase vehicular trips in the area, or will otherwise intensify the use of land in this District: The proposed project individually or together with other projects within or adjacent to the District will not threaten the safety and general welfare or Panoramic Hill residents.
 6. To approve any project involving exterior alterations, construction, demolition or site plan revisions within the Panoramic Hill Historic District: The proposed work will not adversely affect the exterior architectural features of the subject property or the relationship between the subject structure or feature and its neighboring structures and surroundings, including facade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping; and that the proposed work will not detract from or adversely affect the special historical, architectural and aesthetic characteristics of the District.
- C. In addition to any other findings that this chapter requires, the Zoning Officer or Board must make the findings in subsection B to approve any alteration, addition, or enlargement of a nonconforming structure that contains a conforming use as provided for in Sec. 23C.04.070, Expansions of Non-conforming Buildings and Structures. Additions, and enlargements to structures that contain nonconforming uses are not permitted. (Ord. 7135-NS § 2 (part), 2010; Ord. 6980-NS § 3 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions

Chapter 23D.28

R-2 RESTRICTED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.28.010 Applicability of Regulations**
- 23D.28.020 Purposes**
- 23D.28.030 Uses Permitted**
- 23D.28.040 Reserved**
- 23D.28.050 Special Provisions: Addition of Bedrooms to Parcels**
- 23D.28.060 Reserved**
- 23D.28.070 Development Standards**
- 23D.28.080 Parking -- Number of Spaces**
- 23D.28.090 Findings**

Section 23D.28.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-2 Districts. In addition, the general provisions contained in Subtitle 23C shall apply. In the case where the H District overlays a property so as to be classified R-2(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.28.020 Purposes

The purposes of the Restricted Two-family Residential (R-2) Districts are to:

- A. Implement Master Plan policy by encouraging the development of low medium density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
- B. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space;
- C. Protect adjacent properties from unreasonable obstruction of light and air. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.28.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited.

<i>Table 23D.28.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes		
Changes of Use	ZC	Subject to parking requirements under Section 23D.28.080.A
New Construction	UP(PH)	
Community Centers	UP(PH)	

Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions

<i>Table 23D.28.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Dwelling Units, Single-family, Duplex, or Multi-family, subject to R-2 Standards	UP(PH)	No Multiple Dwelling Use is allowed in the (H) overlay
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.28.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.28.090.B.
Libraries	UP(PH)	Subject to parking requirements under Section 23D.28.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.28.050
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C

Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions

<i>Table 23D.28.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 6, 2021; Ord. 7696-NS § 4, 2020; Ord. 7620-NS § 4, 2018; Ord. 7599-NS § 8, 2018; Ord. 7561-NS § 2, 2017; Ord. 7521-NS § 4, 2017; Ord. 7426-NS § 13, 2015; Ord. 7306-NS § 5, 2013; Ord. 7155-NS § 4, 2010; Ord. 7129-NS § 4, 2010; Ord. 6949-NS § 8 (part), 2006; Ord. 6909-NS § 4 (part), 2006; Ord. 6854-NS § 7 (part), 2005; Ord. 6763-NS § 13 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.28.040 Reserved

Reserved. (Ord. 7426-NS § 14, 2015; Ord. 6763-NS § 14 (part), 2003)

Section 23D.28.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms". (Ord. 7306-NS § 6, 2013)

Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions

Section 23D.28.060 Reserved

Section 23D.28.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one Dwelling Unit shall be allowed for each 2,500 square feet of lot area. One additional Dwelling Unit may also be allowed for any remaining lot area which may be less than 2,500 square feet, but not less than 2,000 square feet in area.
- C. Each Main Building shall be limited in height as follows:

	<u>Height limit average (ft.)</u>	<u>Stories limit (number)</u>
Main Building	28*	3
All Residential Additions	14**	Not Applicable
*The Zoning Officer may issue an Administrative Use Permit to allow Main Buildings to exceed 28 feet in average height, up to 35 feet in average height ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.		

- D. The Main Building shall be set back from the respective lot lines, and shall be separated from one another, as follows:

<u>Story</u>	<u>Yard location</u>				<u>Building separation*</u>
	<u>Front</u>	<u>Rear*</u>	<u>Side*</u>	<u>Street side*</u>	
1st	20	20	4	10	8
2nd	20	20	4	10	12
3rd	20	20	6	10	16
*See Section 23D.28.070.D.1 through 4 for yard and building separation reductions					

- 1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
- 2. When the width of any lot is less than 40 feet, the width of each Side Yard may be reduced to 10% of the lot width, but in no case to less than three feet for the first and second floors of a building. The third story Side Yard setback may also be reduced, but in no case shall it be less than five feet.
- 3. The Side Yards on a Corner Lot shall be as follows:
 - a. On a corner lot, where there is a Key Lot to the rear thereof, the street Side Yard of the Corner Lot shall be not less than one-half the Front Yard required or existent on the Key Lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the Side Yard to be in excess of ten feet.
 - b. Where a Rear Yard of not less than 50 feet in depth is maintained on a Corner Lot, adjacent to a Key Lot, the Side Yard may be reduced to four feet.
- 4. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.

Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions

E. Maximum lot coverage may not exceed the following coverage percentages:

<u>Main Building Height (stories)</u>	<u>Lot Coverage Area (%)</u>	
	<u>Interior and Through Lots</u>	<u>Corner Lots</u>
1	45	50
2	40	45
3	35	40

F. Each lot shall contain the following minimum Usable Open Space area for each Dwelling Unit: 400 square feet. (Ord. 6949-NS § 9 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23D.28.080 Parking -- Number of Spaces

The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.28.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

1. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other uses.
2. Schools with a total gross floor area exceeding 10,000 square feet shall satisfy the following off-street loading requirements:
 - a. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
 - b. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet. (Ord. 7751-NS § 11, 2021; Ord. 7599-NS § 9, 2018; Ord. 7426-NS § 15, 2015; Ord. 6763-NS § 15 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.28.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.28.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 16, 2015; Ord. 6980-NS § 4 (part), 2007; Ord. 6763-NS § 16 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.32

R-2A RESTRICTED MULTIPLE-FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.32.010 Applicability of Regulations
- 23D.32.020 Purposes
- 23D.32.030 Uses Permitted
- 23D.32.040 Reserved
- 23D.32.050 Special Provisions: Addition of Bedrooms to Parcels
- 23D.32.060 Reserved
- 23D.32.070 Development Standards
- 23D.32.080 Parking -- Number of Spaces
- 23D.32.090 Findings

Section 23D.32.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-2A Districts. In addition, the general provisions in Sub-title 23C shall apply. In the case where the H District overlays a property so as to be classified R-2A(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.32.020 Purposes

The purposes of the Restricted Multiple-family Residential (R-2A) Districts are to:

- A. Implement Master Plan policy by encouraging the development of medium density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
- B. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit only that intensity of use which will be compatible with existing low density residential structures and will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.32.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited.

<i>Table 23D.32.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements under 23D.32.080.A

Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions

<i>Table 23D.32.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Centers	UP(PH)	
Dwelling Units, Single Family, Duplex or Multi-family, subject to R-2A stds	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.32.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.32.090.B.
Libraries	UP(PH)	Subject to parking requirements under Section 23D.32.080.A
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23D.32.080.A
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.32.050
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences If six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks

Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions

<i>Table 23D.32.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Home Occupations Class I Class II Class II in the Hillside Overlay	ZC AUP Prohibited	Subject to the requirements of Chapter 23C.16
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	Subject to 23C.26
Legend: ZC -- Zoning Certificate UP(PH) -- Use Permit, public hearing required AUP -- Administrative Use Permit Prohibited -- Use not permitted		

(Ord. 7753-NS § 7, 2021; Ord. 7696-NS § 5, 2020; Ord. 7620-NS § 5, 2018; Ord. 7599-NS § 10, 2018; Ord. 7561-NS § 3, 2017; Ord. 7521-NS § 5, 2017; Ord. 7426-NS § 17, 2015; Ord. 7306-NS § 7, 2013; Ord. 7155-NS § 5, 2010; Ord. 7129-NS § 5, 2010; Ord. 6949-NS § 10 (part), 2006; Ord. 6909-NS § 5 (part), 2006; Ord. 6854-NS § 8 (part), 2005; Ord. 6763-NS § 17 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.32.040 Reserved

Reserved. (Ord. 7426-NS § 18, 2015; Ord. 6763-NS § 18 (part), 2003)

Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions

Section 23D.32.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
 - 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
 - 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms". (Ord. 7306-NS § 8, 2013)

Section 23D.32.060 Reserved

Section 23D.32.070 Development Standards

- A. No lot of less than 5,000 square feet of area may be created.
- B. No more than one Dwelling Unit shall be allowed for each 1,650 square feet of lot area. One additional Dwelling Unit may also be allowed for any remaining lot area which may be less than 1,650 square feet, but not less than 1,300 square feet in area.
- C. Each Main Building shall be limited in height as follows:

	<u>Height limit average (ft.)</u>	<u>Stories limit (number)</u>
Main Building	28*	3
All Residential Additions	14**	Not Applicable
* The Zoning Officer may issue an Administrative Use Permit to allow Main Buildings to exceed 28 feet in average height, up to 35 feet in average height ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.		

- D. The Main Building shall be set back from the respective lot lines, and shall be separated from one another, as follows:

<u>Story</u>	<u>Yard location</u>				<u>Building separation*</u>
	<u>Front</u>	<u>Rear*</u>	<u>Side*</u>	<u>Street side*</u>	
1st	15	15	4	6	8
2nd	15	15	4	8	12
3rd	15	15	6	10	16
* See Section 23D.32.070.D.1 through 4 for yard and building separation reductions					

- 1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
- 2. When the width of any lot is less than 40 feet, the width of each Side Yard may be reduced to 10% of the lot width, but in no case to less than three feet for the first and second floors of a building. The third story Side Yard setback may also be reduced, but in no case shall it be less than five feet.

Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions

3. The Side Yards on a Corner Lot shall be as follows:
 - a. On a Corner Lot where there is a Key Lot to the rear thereof, the street Side Yard of the Corner Lot shall be not less than one-half the Front Yard required or existent on the Key Lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the Side Yard to be in excess of ten feet.
 - b. Where a Rear Yard of not less than 50 feet in depth is maintained on a Corner Lot, adjacent to a Key Lot, the Side Yard may be reduced to four feet.
4. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.

E. Maximum lot coverage may not exceed the following coverage percentages:

Main Building Height (stories)	Lot Coverage Area %	
	Interior and Through Lots	Corner Lots
1	45	50
2	40	45
3	35	40

F. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 300 square feet; for each resident of a Group Living Accommodation use, 125 square feet. (Ord. 7561-NS § 4, 2017; Ord. 6949-NS § 11 (part), 2006; Ord. 6854-NS § 9 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.32.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.32.080	
Parking Required	
Use	Number of spaces
Dwellings	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each three employees
Rental of Rooms	One per each two roomers or boarders if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Senior Congregate Housing	One per each five residents plus one for manager if project is located on a roadway less than 26 feet in width in the Hillside Overlay
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

B. Other uses requiring Use Permits issued by the Board, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions

- C. Senior Congregate Housing, Nursing Homes and Schools with a total gross floor area exceeding 10,000 square feet shall satisfy the following requirements:
1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area;
 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet. (Ord. 7751-NS § 12, 2021; Ord. 7599-NS § 11, 2018; Ord. 7426-NS § 19, 2015; Ord. 6763-NS § 19 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.32.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.32.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 20, 2015; Ord. 6980-NS § 5 (part), 2007; Ord. 6763-NS § 20 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

Chapter 23D.36

R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.36.010 Applicability of Regulations**
- 23D.36.020 Purposes**
- 23D.36.030 Uses Permitted**
- 23D.36.040 Reserved**
- 23D.36.050 Special Provisions: Design Review in Southside Plan Area**
- 23D.36.060 Special Provisions: Addition of Bedrooms to Parcels**
- 23D.36.070 Development Standards**
- 23D.36.080 Parking -- Number of Spaces**
- 23D.36.090 Findings**

Section 23D.36.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-3 Districts. In addition, general provisions in Sub-title 23C shall apply. Where the H District overlays a property so as to be classified R-3(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.36.020 Purposes

The purposes of the Multiple Family Residential (R-3) Districts are to:

- A. Implement General Plan policy by encouraging development of relatively high density residential areas;
- B. Make available housing for persons who desire both convenience of location and a reasonable amount of Usable Open Space;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; and
- E. Permit the construction of specialized care and treatment facilities such as Senior Congregate Housing, Nursing Homes and Hospitals when such will not be detrimental to the immediate neighborhood. (Ord. 7210-NS § 8, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23D.36.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.36.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

<i>Table 23D.36.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Care Facilities/Homes		
Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-family, subject to R-3 standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.36.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.36.090.B.
Group Living Accommodations, subject to R-3 standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Parks and Playgrounds	ZC	
Parking Lots When located in R-3 District within the Southside Plan boundaries When located in any other R-3 District	Prohibited UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		
Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.36.060
Accessory Uses and Structures		
Accessory Buildings or Structures If has either habitable space and/or exceeds the requirements under Chapter 23D.08 When located on a vacant lot without a Main Building	ZC AUP AUP	Must satisfy the requirements of Chapter 23D.08

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

<i>Table 23D.36.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

<i>Table 23D.36.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 8, 2021; Ord. 7696-NS § 6, 2020; Ord. 7620-NS § 6, 2018; Ord. 7599-NS § 12, 2018; Ord. 7561-NS § 5, 2017; Ord. 7521-NS § 6, 2017; Ord. 7426-NS § 21, 2015; Ord. 7306-NS § 9, 2013; Ord. 7210-NS § 9, 2011; Ord. 7155-NS § 6, 2010; Ord. 7129-NS § 6, 2010; Ord. 6949-NS § 12 (part), 2006; Ord. 6909-NS § 6 (part), 2006; Ord. 6854-NS § 10 (part), 2005; Ord. 6763-NS § 21 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.36.040 Reserved

Reserved. (Ord. 7426-NS § 22, 2015; Ord. 6763-NS § 22 (part), 2003)

Section 23D.36.050 Special Provisions: Design Review in Southside Plan Area

A. In R-3 Districts that are located within the Southside Plan boundaries, all Mixed Use and Community and Institutional projects in the areas set forth below shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12.

B. The portion of the R-3 District within the Southside Plan boundaries is defined as follows:

Areas east of Telegraph

The complete blocks bounded by:

- Prospect, Channing, Warring and Bancroft Steps;
- Prospect, Dwight, Warring and Channing;
- Warring, Channing, Piedmont and Bancroft; and
- Warring, Dwight, Piedmont and Channing.

The partial blocks bounded by:

- Piedmont, Durant, College and Bancroft, minus the properties abutting the east side of College Avenue;
- Piedmont, Channing, College and Durant, minus the properties abutting the east side of College Avenue and 2709 Channing;
- Piedmont, Haste, College and Channing, minus the properties abutting the east side of College Avenue and 2704-2706 Channing and 2708 Channing;
- Piedmont, Dwight, College and Haste, minus the properties abutting the east side of College Avenue; and
- Bowditch, Dwight, Telegraph and Haste, minus the properties within 150 feet of the eastern right-of-way on Telegraph.

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

Additional properties as described below:

- The properties abutting the east side of Bowditch Street between Dwight Way and Haste Street;
- The properties abutting the south side of Dwight Way between Piedmont Crescent and Regent Street, and also including the parcels with the following addresses or parcel number: 2508 Benvenue, 2514-2516 Benvenue, 2508 Hillegass, 2509-2515 Regent, 2506 Dwight, and APN 55-1839-3 but excluding the 90-foot by 135-foot southwest portion of the 2700 Dwight parcel which is 110 feet away from this parcel's northern property line;
- The properties north of the Bancroft Steps; and
- The properties abutting the east side of Prospect Street between Bancroft Steps and Dwight Way, including 11 Hillside Court and 2903 Dwight Way.

Areas west of Telegraph

The complete blocks bounded by:

- Ellsworth, Haste, Atherton and Channing;
- Atherton, Haste, Fulton and Channing; and
- Dana, Dwight, Ellsworth and Haste.

The partial block bounded by:

- Ellsworth, Dwight, Fulton and Haste, minus the south-west corner extending 180 feet along Fulton and 150 feet along Dwight.

Additional properties as described below:

- The properties within 134.5 feet of the southern right-of-way of Dwight Way, between Ellsworth Street and 378.5 feet east of Dana Street;
- The properties within 135 feet of the southern right-of-way of Dwight Way, between Ellsworth Street and Fulton Street;
- The properties on the north-west corner of Haste and Fulton, extending 90 feet along Fulton and extending 150 feet along Haste; and
- The properties on the south-west corner of Haste and Fulton, extending 135 feet along Fulton and 150 feet along Haste. (Ord. 7210-NS § 10, 2011)

Section 23D.36.060 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms". (Ord. 7306-NS § 10, 2013)

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

Section 23D.36.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 350 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 350 square feet, but not less than 200 square feet in area.
- C. Each Main Building shall be limited in height as follows:

	<u>Height limit average (ft.)</u>	<u>Stories limit (number)</u>
Main Building	35	3
All Residential Additions	16*	Not Applicable
* The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.		

- D. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

<u>Story</u>	<u>Yard location</u>				<u>Building separation*</u>
	<u>Front</u>	<u>Rear*</u>	<u>Side</u>	<u>Street side</u>	
1st	15	15	4	6	8
2nd	15	15	4	8	12
3rd	15	15	6	10	16
* See Section 23D.36.070.D.1 and 2 for yard and building separation reductions.					

- 1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
- 2. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.

- E. Maximum lot coverage may not exceed the following coverage percentages:

<u>Main Building Height (stories)</u>	<u>Lot Coverage Area (%)</u>	
	<u>Interior and Through Lots</u>	<u>Corner Lots</u>
1 or 2	45	50
3	40	45

- 1. Lot coverage may be increased for a project in an R-3 District located within the Southside Plan boundaries if an Administrative Use Permit is obtained with one or both of the following findings:
 - a. The increased coverage would enable a new rear dwelling on the lot; or
 - b. It would enable moving a historic building onto the lot.

- F. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 200 square feet; for each person who resides in a Group Living Accommodation use, 90 square feet.

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

- G. Projects located within the Southside Plan boundaries that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP). (Ord. 7210-NS § 11, 2011; Ord. 6949-NS § 13 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23D.36.080 Parking -- Number of Spaces

- A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.36.080

Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (fewer than ten)	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see below) if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Hospitals	One per each four beds, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each three employees
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

- B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.
- C. Senior Congregate Housing, Hospitals, Nursing Homes, and Schools with a total gross floor area exceeding 10,000 square feet shall satisfy the requirements of Chapter 23E.32 and the following requirements:
1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area above the first 10,000 square feet. (Ord. 7751-NS § 13, 2021; Ord. 7599-NS § 13, 2018; Ord. 7426-NS § 23, 2015; Ord. 7210-NS § 12, 2011; Ord. 6763-NS § 23 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.36.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.36.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this chapter, the addition would unreasonably obstruct sunlight, air or views.

Chapter 23D.36: R-3 Multiple Family Residential District Provisions

- C. To approve a Permit for a project located within the Southside Area boundaries, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP). (Ord. 7426-NS § 24, 2015; Ord. 7210-NS § 13, 2011; Ord. 6980-NS § 6 (part), 2007; Ord. 6763-NS § 24 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

Chapter 23D.40

R-4 MULTI-FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.40.010 Applicability of Regulations
- 23D.40.020 Purposes
- 23D.40.030 Uses Permitted
- 23D.40.040 Special Provisions -- Design Review
- 23D.40.050 Reserved
- 23D.40.060 Reserved
- 23D.40.070 Development Standards
- 23D.40.080 Parking -- Number of Spaces
- 23D.40.090 Findings

Section 23D.40.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-4 Districts. In addition, the general provisions in Sub-title 23C shall apply. Where the H District overlays a property so as to be classified R-4(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.020 Purposes

The purposes of the Multi-family Residential (R-4) Districts are to:

- A. Implement Master Plan policy by encouraging development of relatively high density residential areas;
- B. Make available housing for persons who desire both convenience of location and a reasonable amount of Usable Open Space;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as residential hotels, and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Permit the construction of institutional and office uses when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.40.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

Table 23D.40.030 (Continued)

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-4 Standards Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	UP(PH) ZC AUP	See Section 23D.40.070 for restrictions. See definition in Sub-title F. Denial subject to Section 23D.40.090.B.
Group Living Accommodations subject to R-4 standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Hotels	UP(PH)	Subject to parking requirements; see Section 23D.40.080.A. Also subject to Design Review; see Section 23D.40.040
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Offices	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A. Also subject to design review; see Section 23D.40.040.
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060.

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

<i>Table 23D.40.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making of applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Emergency Shelter		
Up to 15 beds	ZC	
More than 15 beds	UP(PH)	Such shelters may operate only during the wet weather season from November 15 through April 15. See Chapter 23C.10.
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		
Low-Impact Urban Agriculture (LIUA)	ZC	Subject to 23C.26

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

<i>Table 23D.40.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 9, 2021; Ord. 7696-NS § 7, 2020; Ord. 7620-NS § 7, 2018; Ord. 7599-NS § 14, 2018; Ord. 7521-NS § 7, 2017; Ord. 7426-NS § 25, 2015; Ord. 7322-NS § 2, 2013; Ord. 7210-NS § 14, 2011; Ord. 7155 § 7, 2010; Ord. 7129-NS § 7, 2010; Ord. 6949-NS § 14 (part), 2006; Ord. 6909-NS § 7 (part), 2006; Ord. 6854-NS § 11 (part), 2005; Ord. 6763-NS § 25 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6658-NS § 1, (2001); 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.040 Special Provisions -- Design Review

Commercial and mixed use projects shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.050 Reserved

Reserved. (Ord. 7210-NS § 15, 2011; Ord. 6658-N.S. § 2, 2001)

Section 23D.40.060 Reserved

Reserved. (Ord. 7426-NS § 26, 2015; Ord. 6763-NS § 26 (part), 2003)

Section 23D.40.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 350 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 350 square feet, but not less than 200 square feet in area.
- C. Each Main Building shall be limited in height as follows:

	<u>Height limit average (ft.)</u>	<u>Stories limit (number)</u>
Main Building	35*	3*
All Residential Additions	16**	Not Applicable
<p>* Main Buildings may exceed 35 ft. and three stories in height, to a height of, but not exceeding, 65 ft. and six stories subject to obtaining a Use Permit</p> <p>** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.</p>		

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

- D. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

Story	Yard location				Building separation*
	Front	Rear*	Side	Street side	
1st	15	15	4	6	8
2nd	15	15	4	8	12
3rd	15	15	6	10	16
4th	15	17	8	12	20
5th	15	19	10	14	24
6th	15	21	12	15	28
*See Sections 23D.40.070.D.1 and 2 for yard and building separation reductions					

1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
2. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to Administrative Use Permit.

- E. Maximum lot coverage may not exceed the following coverage percentages:

Main Building Height (stories)	Lot Coverage Area (%)	
	Interior and Through Lots	Corner Lots
1 or 2	45	50
3	40	45
4 through 6	35	40

- F. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 200 square feet; for each person who resides in a Group Living Accommodation use, 90 square feet. (Ord. 6949-NS § 15 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.080 Parking -- Number of Spaces

- A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.40.080	
Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (fewer than ten)	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (ten or more)	One per 1,000 sq. ft. of gross floor area required if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees for a Community Care Facility*
Hospitals	One per each four beds, plus one per each three employees

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

Table 23D.40.080 (Continued)	
Parking Required	
Use	Number of spaces
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each three employees
Offices, Medical	One per 300 sq. ft. of gross floor area
Offices, Other	One per 400 sq. ft. of gross floor area; (may be reduced, see Section D below)
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.	

- B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.
- C. For offices, other than medical offices, the Board may reduce the parking requirement from one Off-street Parking Space per 400 square feet of gross floor area to a minimum of one parking space per 800 square feet of gross floor area, subject to making the required finding under Section 23D.40.090.C. In addition, any parking supplied jointly with multiple family residential uses shall be subject to the requirements set forth in Section 23D.12.060.B.
- D. Senior Congregate Housing, Hotels, Hospitals, Nursing Homes, Offices (including Medical Offices) and Schools with a total gross floor area exceeding 10,000 square feet shall satisfy the requirements of Chapter 23E.32 and the following requirements:
 - 1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
 - 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the 10,000 square feet. (Ord. 7751-NS § 14, 2021; Ord. 7599-NS § 15, 2018; Ord. 7426-NS § 27, 2015; Ord. 6763-NS § 27 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.40.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make any findings required by the following paragraphs of this section to the extent applicable. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.40.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Chapter 23D.40: R-4 Multi-Family Residential District Provisions

- C. The reduction in the parking requirement is justified, in this particular case, because of a reduced amount of direct contact with clients, visitors or the general public. (Ord. 7426-NS § 28, 2015: Ord. 6980-NS § 7 (part), 2007: Ord. 6763-NS § 28 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.44: R-5 High Density Residential District Provisions

Chapter 23D.44

R-5 HIGH DENSITY RESIDENTIAL DISTRICT PROVISIONS

Sections:

- 23D.44.010 Applicability of Regulations**
- 23D.44.020 Purposes**
- 23D.44.030 Uses Permitted**
- 23D.44.040 Reserved**
- 23D.44.050 Reserved**
- 23D.44.060 Reserved**
- 23D.44.070 Development Standards**
- 23D.44.080 Parking -- Number of Spaces**
- 23D.44.090 Findings**

Section 23D.44.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-5 Districts. In addition, the general provisions contained in Subtitle 23C shall apply. Where the H District overlays a property so as to be classified R-5(H), the Hillside District provisions of 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.44.020 Purposes

The purposes of the High Density Residential (R-5) Districts are to:

- A. Foster development of high density, multi-story residential areas close to major shopping, transportation and employment centers, in accordance with the Master Plan;
- B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as apartments and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Permit the construction of institutional and office uses when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.44.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.44.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	

Chapter 23D.44: R-5 High Density Residential District Provisions

<i>Table 23D.44.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-5 stds Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	UP(PH) ZC AUP	See Section 23D.44.070 for restrictions. See definition in Sub-title F. Denial subject to Section 23D.44.090.B.
Group Living Accommodations subject to R-5 standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Hotels	UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Offices	UP(PH)	Subject to parking requirements. See Section 23D.44.080.A
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	

Chapter 23D.44: R-5 High Density Residential District Provisions

<i>Table 23D.44.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care, Family Daycare Home (Small or Large)	ZC	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Class I Class II	ZC AUP	Subject to the requirements of Chapter 23C.16
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Emergency Shelter Up to 15 beds More than 15 beds	ZC UP(PH)	Such shelters may operate only during the wet weather season from November 15 through April 15. See Chapter 23C.10.
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA)	ZC	Subject to 23C.26

Chapter 23D.44: R-5 High Density Residential District Provisions

<i>Table 23D.44.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 10, 2021; Ord. 7696-NS § 8, 2020; Ord. 7620-NS § 8, 2018; Ord. 7599-NS § 16, 2018; Ord. 7521-NS § 8, 2017; Ord. 7426-NS § 29, 2015; Ord. 7322-NS § 3, 2013; Ord. 7155-NS § 8, 2010; Ord. 7129-NS § 8, 2010; Ord. 6949-NS § 16 (part), 2006; Ord. 6909-NS § 8 (part), 2006; Ord. 6854-NS § 12 (part), 2005; Ord. 6763-NS § 29 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23D.44.040 Reserved

Reserved. (Ord. 7426-NS § 30, 2015; Ord. 6763-NS § 30 (part), 2003)

Section 23D.44.050 Reserved

Section 23D.44.060 Reserved

Section 23D.44.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 175 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 175 square feet, but not less than 100 square feet in area.
- C. Each Main Building shall be limited in height as follows:

	<u>Height limit average (ft.)</u>	<u>Stories limit (number)</u>
Main Building	40*	4*
All Residential Additions	18**	Not Applicable
* Main Buildings may exceed 40 ft. and four stories in height, to a height of, but not exceeding 65 ft. and six stories subject to obtaining a Use Permit ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 18 feet in average height, up to the district limit.		

- D. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

<u>Story</u>	<u>Yard location</u>				<u>Building separation*</u>
	<u>Front</u>	<u>Rear*</u>	<u>Side</u>	<u>Street side</u>	
1st	10	15	4	6	8
2nd	10	15	4	8	12
3rd	10	15	6	10	16

Chapter 23D.44: R-5 High Density Residential District Provisions

Story	Yard location				Building separation*
	Front	Rear*	Side	Street side	
4th	10	17	8	10	20
5th	10	19	10	10	24
6th	10	21	12	10	28
* See Sections 23D.40.070.D.1 and 2 for yard and building separation reductions					

1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
2. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to Administrative Use Permit.

E. Maximum lot coverage may not exceed the following coverage percentages:

Main Building Height (stories)	Lot Coverage Area (%)	
	Interior and Through Lots	Corner Lots
1 or 2	55	60
3	50	55
4	45	50
5 or 6	40	45

F. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 100 square feet; for each person residing in a Group Living Accommodation use, 35 square feet. (Ord. 6949-NS § 17 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23D.44.080 Parking -- Number of Spaces

A. The following parking requirements shall apply to new floor area or conversion of space:

Table 23D.44.080	
Parking Required	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Senior Congregate Housing	One per each five residents, plus one for manager if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (fewer than ten)	One per unit if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Dwellings (ten or more)	One per 1,200 sq ft of gross floor area if project is located on a roadway less than 26 feet in width in the Hillside Overlay
Community Care Facilities	One per two non-resident employees*
Hospitals	One per each four beds, plus one per each three employees
Hotels	One per each three guest rooms, plus one per each three employees
Libraries	One per 500 sq ft of floor area that is publicly accessible
Nursing Homes	One per each three employees

Chapter 23D.44: R-5 High Density Residential District Provisions

Table 23D.44.080 (Continued)	
Parking Required	
Offices, Medical	One per 300 sq ft of gross floor area
Offices, Other	One per 400 sq ft of gross floor area (may be reduced, see Section D below)
*This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

- B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-street Parking Spaces as determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.
- C. For offices, other than medical offices, the Board may reduce the parking requirement from one Off-street Parking Space per 400 square feet of gross floor area to a minimum of one parking space per 800 square feet of gross floor area, subject to making the required finding under Section 23D.44.090.C. In addition any parking supplied jointly with multiple family residential uses shall be subject to the requirements set forth in Section 23D.12.060.B.
- D. Senior Congregate Housing, Hotels, Hospitals, Nursing Homes, Offices (including Medical Offices) and Schools with a total gross floor area exceeding 10,000 square feet shall satisfy the requirements of Chapter 23E.32 and the following requirements:
 - 1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.
 - 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of above the first 10,000 square feet. (Ord. 7751-NS § 15, 2021; Ord. 7599-NS § 17, 2018; Ord. 7426-NS § 31, 2015; Ord. 6763-NS § 31 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.44.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.44.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.
- C. The reduction in the parking requirement is justified, in this particular case, because of a reduced amount of direct contact with clients, visitors or the general public. (Ord. 7426-NS § 32, 2015; Ord. 6980-NS § 8 (part), 2007; Ord. 6763-NS § 32 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.48: R-S Residential Southside District Provisions

Chapter 23D.48

R-S RESIDENTIAL SOUTHSIDE DISTRICT PROVISIONS

Sections:

23D.48.010	Applicability of Regulations
23D.48.020	Purposes
23D.48.030	Uses Permitted
23D.48.040	Reserved
23D.48.050	Special Provisions -- Design Review
23D.48.060	Reserved
23D.48.070	Development Standards
23D.48.080	Parking -- Number of Spaces
23D.48.090	Findings

Section 23D.48.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-S Districts. In addition, the general provisions in Sub-title 23C shall apply. Where the H District overlays a property so as to be classified R-S(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.020 Purposes

The purposes of the Residential Southside (R-S) Districts are to:

- A. Implement General Plan and Southside Plan policy by encouraging relatively high and moderate density, multi-story residential development close to major shopping, transportation and employment centers;
- B. Make housing available for persons who desire a convenient location with relatively small amounts of Usable Open Space, yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as apartments, and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Encourage the construction of new housing on vacant properties and surface parking lots;
- F. Encourage the redevelopment of single-story structures that are not historically significant resources with more dense housing development; and
- G. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character. (Ord. 7208-NS § 1 (part), 2011)

Chapter 23D.48: R-S Residential Southside District Provisions

Section 23D.48.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.48.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Clubs, Lodges	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.48.080
Community Centers	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-S Standards Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	UP(PH) ZC AUP	See Section 23D.48.070 for restrictions. See definition in Sub-title 23F. Denial subject to Section 23D.48.090.B.
Group Living Accommodations subject to R-S standards	UP(PH)	
Hospitals	Prohibited	
Hotels	UP(PH)	Subject to parking requirements; see Section 23D.48.080
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.48.080
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.48.080
Offices	Prohibited	
Parking Lots	Prohibited	
Parking Structures	UP(PH)	Subject to Section 23D.12.090
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit

Chapter 23D.48: R-S Residential Southside District Provisions

<i>Table 23D.48.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care, Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Emergency Shelter		Such shelters may operate only during the wet weather season from November 15 through April 15. See Chapter 23C.10.
Up to 15 beds	ZC	
More than 15 beds	UP(PH)	

Chapter 23D.48: R-S Residential Southside District Provisions

<i>Table 23D.48.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 11, 2021; Ord. 7696-NS § 9, 2020; Ord. 7620-NS § 9, 2018; Ord. 7599-NS § 18, 2018; Ord. 7521-NS § 9, 2017; Ord. 7426-NS § 33, 2015; Ord. 7322-NS § 4, 2013; Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.040 Reserved

Reserved. (Ord. 7426-NS § 34, 2015; Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.050 Special Provisions -- Design Review

All Mixed Use and Community and Institutional projects shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12. (Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.060 Reserved

Reserved. (Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 350 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 350 square feet, but not less than 200 square feet in area.
- C. The height for a Main Building shall satisfy the following requirements:
 - 1. The maximum height shall be three stories and 35 feet, except as otherwise provided in paragraph 2 below.

Chapter 23D.48: R-S Residential Southside District Provisions

2. The Board may approve a Use Permit to increase a project's height to a maximum height of four stories and 45 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and
 - b. The project meets the purposes of the District.

D. The height for a Residential Addition shall satisfy the following requirements:

1. The maximum height shall be 16 feet, except as otherwise provided in paragraph 2 below.
2. The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.

E. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

	Yard location				
Story	Front	Rear*	Side	Street side	Building separation*
1st	10	10	4	6	8
2nd	10	10	4	8	12
3rd	10	10	6	10	16
4th	10	17	8	10	20

* See Sections 23D.48.070.E.1, 2 and 3 for yard and building separation reductions.

1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
2. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.
3. Front setbacks shall be 10 feet but may be reduced to as little as 0 feet through an Administrative Use Permit with a finding that the smaller setback is appropriate given the setbacks and architectural design of surrounding buildings.

F. Maximum lot coverage may not exceed the following coverage percentages:

	Lot Coverage Area (%)	
Main Building Height (stories)	Interior and Through Lots	Corner Lots
1 or 2	65	70
3	60	65
4	55	60

- G. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 50 square feet; for each person who resides in a Group Living Accommodation use, 20 square feet.
- H. Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP). (Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23D.12, except as set forth in this Section.

Chapter 23D.48: R-S Residential Southside District Provisions

- B. The following provisions shall apply to properties within the R-S District:
 - 1. No Off-street Parking Spaces shall be required for new Dwelling Units, Group Living Accommodations, or Accessory Dwelling Units.
 - 2. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- C. Occupants of Dwelling Units and Group Living Accommodation rooms constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Section 14.72 of the BMC.
- D. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.
- E. Any construction which results in the creation of 10,000 square feet of new or additional non-residential gross floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:
 - 1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and
 - 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.
- F. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted. (Ord. 7751-NS § 16, 2021; Ord. 7208-NS § 1 (part), 2011)

Section 23D.48.090 Findings

- A. In order to approve any Permit under this Chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make any findings required by the following subdivisions to the extent applicable.
- B. To approve a Use Permit to reduce existing parking, the Board must find that the parking reduction would be consistent with the purposes of the District, as well as make the findings of Section 23E.28.140.
- C. To approve a parking waiver, the Zoning Officer or Board must find that additional or new on-site parking would be detrimental, and that either the existing parking supply in the immediate neighborhood is adequate, or that other mitigating conditions are present and apply to the property.
- D. *Repealed by Ord. 7426-NS.*
- E. To deny a Use Permit for a major residential addition or residential addition subject to 23D.48.070 the Zoning Officer or Board must find that the addition would unreasonably obstruct sunlight, air or views.
- F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP). (Ord. 7426-NS § 35, 2015; Ord. 7208-NS § 1 (part), 2011)

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

Chapter 23D.52

R-SMU RESIDENTIAL SOUTHSIDE MIXED USE DISTRICT PROVISIONS

Sections:

23D.52.010	Applicability of Regulations
23D.52.020	Purposes
23D.52.030	Uses Permitted
23D.52.040	Reserved
23D.52.050	Special Provisions -- Design Review
23D.52.060	Commercial Additions and Conversions of Existing Buildings -- Requirements for Use Permits
23D.52.070	Development Standards
23D.52.080	Parking -- Number of Spaces
23D.52.090	Findings

Section 23D.52.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-SMU Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.020 Purposes

The purposes of the Southside Mixed Use Residential (R-SMU) Districts are to:

- A. Implement General Plan and Southside Plan policy by encouraging high density, multi-story residential development close to major shopping, transportation and employment centers;
- B. Make housing available for persons who desire a convenient location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as apartments and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Permit the construction of institutional, neighborhood serving retail, and office uses when such will not be detrimental to the immediate neighborhood;
- F. Provide locations for relocation of office space from other locations in the Southside Plan area;
- G. Encourage the construction of new housing and mixed-use development on vacant properties and surface parking lots;
- H. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development; and
- I. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character. (Ord. 7209-NS § 1 (part), 2011)

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

Section 23D.52.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23D.52.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Child Care Centers	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Clubs, Lodges	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.52.080
Community Centers	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-SMU Standards Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	UP(PH) ZC AUP	 See Section 23D.52.070 for restrictions. See definition in Sub-title 23F. Denial subject to Section 23D.52.090.B.
Group Living Accommodations subject to R-SMU Standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Uses and Structures		
Accessory Buildings or Structures If has either habitable space and/or exceeds the requirements under Chapter 23D.08	ZC AUP	Must satisfy the requirements of Chapter 23D.08

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

<i>Table 23D.52.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Class I Class II	ZC AUP	Subject to the requirements of Chapter 23C.16
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Uses Permitted in Commercial Districts		
Alcoholic Beverage Retail Sales	Prohibited	
Alcoholic Beverage Service (no Bars, Cocktail Lounges, or Taverns allowed)	UP(PH)	Service of alcoholic beverages may be approved only for Full Service Restaurants
Food Products Stores	UP(PH)	Limited to 3,000 square feet in size.
Food Service Establishments	UP(PH)	Limited to 1,200 square feet in size
Hotels	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23D.52.070.H
Offices	UP(PH)	Subject to parking requirements. See Section 23D.52.080.
Parking Lots	Prohibited	
Parking Structures	UP(PH)	Subject to Section 23D.12.090
All Personal and Household Services, except those listed below: Laundromats Veterinary Clinics, including Pet Hospitals	ZC UP(PH) UP(PH)	Subject to the use limitations of Section 23E.40.060 and parking regulations of Section 23E.52.080.

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

<i>Table 23D.52.030 (Continued)</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Video Tape/Disk Rental Stores	UP(PH)	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Emergency Shelter Up to 15 beds More than 15 beds	ZC UP(PH)	Such shelters may operate only during the wet weather season from November 15 through April 15. See Chapter 23C.10.
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

(Ord. 7753-NS § 12, 2021; Ord. 7696-NS § 10, 2020; Ord. 7620-NS § 10, 2018; Ord. 7599-NS § 19, 2018; Ord. 7521-NS § 10, 2017; Ord. 7426-NS § 36, 2015; Ord. 7322-NS § 5, 2013; Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.040 Reserved

Reserved. (Ord. 7426-NS § 37, 2015; Ord. 7209-NS § 1 (part), 2011)

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

Section 23D.52.050 Special Provisions -- Design Review

All Commercial, Mixed Use and Community and Institutional projects shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12. (Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.060 Commercial Additions and Conversions of Existing Buildings -- Requirements for Use Permits

- A. Commercial gross floor area shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings, additions to existing buildings or the installation of new floor or Mezzanine levels within or onto existing buildings.
- B. Existing buildings used for commercial activities shall not be converted unless an Administrative Use Permit is obtained.
- C. Commercial structures are also subject to the development standards set forth in Section 23D.52.070. (Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 175 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 175 square feet, but not less than 100 square feet in area.
 1. The Board may approve a Use Permit to increase the density of a Group Living Accommodation use if it makes the following findings:
 - a. At least 50% of the total building floor area is designated for residential use;
 - b. The increase in density will not be detrimental to the immediate neighborhood; and
 - c. The project meets the purposes of the District.
- C. The height for a Main Building shall satisfy the following requirements:
 1. The maximum height shall be four stories and 60 feet, except as otherwise provided in paragraphs 2 and 3 below.
 2. Within the portions of the District located east of Telegraph Avenue and/or more than 130 feet south of Bancroft Way, the Board may approve a Use Permit to increase a project's maximum height to five stories and 65 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and
 - b. The project meets the purposes of the District.
 3. Within the portion of the District located west of Telegraph Avenue and within 130 feet from Bancroft Way, the Zoning Board may approve a Use Permit to increase a project's maximum height to five stories and 75 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

b. The project meets the purposes of the District.

D. The height for a Residential Addition shall satisfy the following requirements:

1. The maximum height shall be 16 feet, except as otherwise provided in paragraph 2 below.
2. The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.

E. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

	<u>Story</u>	Yard location				<u>Building separation**</u>
		<u>Front</u>	<u>Rear</u>	<u>Side</u>	<u>Street side</u>	
Main Buildings with Dwelling Units or Group Living Accommodations or located north of Durant Avenue	1st	10	10	4	6	8
	2nd	10	10	4	8	12
	3rd	10	10	6	10	16
	4th	10	17	8	10	20
	5th	10	19	10	10	24
All other Main Buildings	1st	15	15	4	6	8
	2nd	15	15	4	8	12
	3rd	15	15	6	10	16
	4th	15	17	8	10	20

** See Sections 23D.52.070.E.1, 2 and 3 for yard and building separation reductions.

1. For a Main Building that contains Dwelling Units or Group Living Accommodations or is located north of Durant Avenue, the setbacks may be reduced to as little as 0 feet if this is approved through an Administrative Use Permit with a finding that the reduction is appropriate given the setbacks and architectural design of surrounding buildings.
2. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
3. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.

F. Maximum lot coverage may not exceed the following coverage percentages:

	<u>Main Building Height (stories)</u>	Lot Coverage Area (%)	
		<u>Interior and Through Lots</u>	<u>Corner Lots</u>
Main Buildings with Dwelling Units or Group Living Accommodations, or located north of Durant Ave.	1 or 2	55	60
	3	50	55
	4	45	50
	5	40	45
All other Main Buildings	1 or 2	45	50
	3	40	45
	4	35	40

1. For a Main Building that contains Dwelling Units or Group Living Accommodations or is located north of Durant Avenue, the lot coverage may be increased up to 100% if this is approved through an

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

Administrative Use Permit with a finding that the increase is appropriate given the setbacks and architectural design of surrounding buildings.

- G. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 40 square feet; for each person who resides in a Group Living Accommodation use, 20 square feet.
- H. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, including the density limitations of the R-SMU District and as follows:
 - 1. Each Mixed Use building shall contain at least 40 square feet of Usable Open Space per Dwelling Unit for the residential use portion.
- I. Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP). (Ord. 7323-NS § 6, 2014; Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of Chapter 23D.12 and this Section.
 - 1. No Off-Street Parking Spaces shall be required for new Dwelling Units, Group Living Accommodations, or Accessory Dwelling Units.
 - 2. For non-residential uses and for Main Buildings with no Dwelling Units or Group Living Accommodations, Off-Street Parking Spaces shall be provided in accordance with the following requirements:
 - a. The minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area of commercial space. Uses listed in Table 23D.52.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area or changes of use.

Table 23D.52.080

Parking Required	
Use	Number of spaces
Hotels	One per each three guest/sleeping rooms or suites plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of gross floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of gross floor area
Nursing Homes	One per each three employees

- b. Other uses requiring Use Permits, including but not limited to, Child Care Centers, Clubs, Lodges and Community Centers, shall provide the number of Off-Street Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specific standards for other uses.
- 3. For non-residential uses in Main Buildings that include Dwelling Units or Group Living Accommodations, parking requirements may be waived if approved through an Administrative Use Permit with a finding that the parking reduction is consistent with the purposes of the District.
- 4. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.

Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions

5. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of new commercial space, and in accordance with the requirements of Section 23E.28.070.
- B. Occupants of Dwelling Units and Group Living Accommodations constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Section 14.72 of the BMC.
- C. Any new construction which results in the creation of 10,000 square feet of new or additional non-residential floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:
 1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and
 2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.
- D. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted. (Ord. 7751-NS § 17, 2021; Ord. 7209-NS § 1 (part), 2011)

Section 23D.52.090 Findings

- A. In order to approve any Permit under this Chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make any findings required by the following subdivisions to the extent applicable.
- B. Administrative Permits to reduce front or street side yards or to increase in lot coverage may be considered only for Main Buildings that contain Dwelling Units or Group Living Accommodations or that are located north of Durant Avenue. To approve an Administrative Use Permit for the setback reductions or to increase lot coverage subject to Section 23D.52.070, the Zoning Officer or Board must find that the exception is appropriate given the setbacks and architectural design of surrounding buildings.
- C. To approve a parking waiver for a non-residential use in a building with residential uses, the Zoning Officer or Board must find that the parking reduction would be consistent with the purposes of the District.
- D. To approve a Permit to reduce existing parking, the Zoning Officer or Board must find that the parking reduction would be consistent with the purposes of the District and meets the findings of Section 23E.28.140.
- E. To deny a Use Permit for a major residential addition or residential addition subject to Section 23D.52.070, the Zoning Officer or Board must find that the addition would unreasonably obstruct sunlight, air or views.
- F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP). (Ord. 7209-NS § 1 (part), 2011)

Sub-Title 23E

PROVISIONS APPLICABLE IN ALL NON-RESIDENTIAL DISTRICTS

Chapters:

23E.04	LOT AND DEVELOPMENT STANDARDS
23E.08	DESIGN REVIEW
23E.12	DESIGN REVIEW PROCESS
23E.16	SPECIAL USE STANDARDS
23E.18	TEMPORARY OUTDOOR USES ON PRIVATE PROPERTY
23E.20	LIVE/WORK PROVISIONS
23E.24	SIDEWALK CAFE SEATING
23E.28	OFF-STREET PARKING AND TRANSPORTATION SERVICES FEE
23E.32	LOADING SPACE REQUIREMENTS
23E.36	C-1 GENERAL COMMERCIAL DISTRICT PROVISIONS
23E.40	C-N NEIGHBORHOOD COMMERCIAL DISTRICT PROVISIONS
23E.44	C-E ELMWOOD COMMERCIAL DISTRICT PROVISIONS
23E.48	C-NS NORTH SHATTUCK COMMERCIAL DISTRICT PROVISIONS
23E.52	C-SA SOUTH AREA COMMERCIAL DISTRICT PROVISIONS
23E.56	C-T TELEGRAPH AVENUE COMMERCIAL DISTRICT PROVISIONS
23E.60	C-SO SOLANO AVENUE COMMERCIAL DISTRICT PROVISIONS
23E.64	C-W WEST BERKELEY COMMERCIAL DISTRICT PROVISIONS
23E.68	C-DMU DOWNTOWN MIXED USE DISTRICT PROVISIONS
23E.70	C-AC ADELINE CORRIDOR COMMERCIAL DISTRICT PROVISIONS
23E.72	M MANUFACTURING DISTRICT PROVISIONS
23E.76	MM MIXED MANUFACTURING DISTRICT PROVISIONS
23E.80	MU-LI MIXED USE-LIGHT INDUSTRIAL DISTRICT PROVISIONS
23E.84	MU-R MIXED USE-RESIDENTIAL DISTRICT PROVISIONS
23E.88	SP SPECIFIC PLAN DISTRICT PROVISIONS
23E.92	U UNCLASSIFIED DISTRICT PROVISIONS
23E.96	H HILLSIDE OVERLAY DISTRICT PROVISIONS
23E.98	CIVIC CENTER DISTRICT OVERLAY

Chapter 23E.04: Lot and Development Standards

Chapter 23E.04

LOT AND DEVELOPMENT STANDARDS

Sections:

23E.04.010	Lot Requirements
23E.04.020	Heights
23E.04.030	Yards and Building Separations
23E.04.040	Fences and Other Unenclosed Accessory Structures
23E.04.050	Special Yard Requirements for C- Lots Abutting Residential Zones
23E.04.060	Special Building Feature Requirements for C- Lots Abutting Residential Zones

Section 23E.04.010 Lot Requirements

- A. When one or more buildings are developed in conjunction with a common area in a commercial condominium ownership arrangement, the building or buildings and the common area together will be treated as a single lot for the lot size, FAR, and any yard, usable open space and parking requirements.
- B. The shorter of the two (2) intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage, and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.04.020 Heights

- A. In any commercial, mixed use or manufacturing District, the height limits for Schools, buildings for Religious Assembly Use, hospitals and other public buildings permitted in such District shall not exceed the height limit permitted for that District.
- B. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television, or other messages; except for electromagnetic signals for cellular radiotelephone service and wireless telecommunications; and flag poles, chimneys, water tanks, heating and air conditioning equipment, skylights, solar energy equipment, vents, pipes and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the District in which the building is located. Wireless telecommunication antennas, other than those located within the public right-of-way, shall be subject to the height restrictions in Section 23C.17.060 and shall require a Use Permit or Administrative Use Permit.
- C. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an AUP, including, but not limited to, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements which exceed a District's height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all of the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building. (Ord. 6671-NS § 5 2001: Ord. 6478-NS § 4 (part), 1999)

Section 23E.04.030 Yards and Building Separations

- A. An accessory building or structure, other than a subterranean structure, that is attached to or is within three (3) feet of a main building, shall be considered a part of the main building for the purposes of yard requirements.
- B. No detached accessory building or enclosed accessory structure shall be erected or expanded within five (5) feet of an alley. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.04: Lot and Development Standards

Section 23E.04.040 Fences and Other Unenclosed Accessory Structures

- A. No fence or other un-enclosed accessory structure located on a property line or within the required yard area for a main building, shall exceed six (6) feet in height at any point, unless an Administrative Use Permit is obtained.
- B. The height of any such fence or structure shall be determined by measuring the vertical distance from the lowest existing grade point within a three (3) foot radius of any point of such fence or structure, to the highest point of such structure.
- C. A fence, or any portion of a fence, along a public right-of-way, including, but not limited to streets, sidewalks and paths, may have strands of barbed or razor wire, provided that the lowest strand is more than five (5) feet above the ground, over a privately owned lot and at least six (6) inches inside the property line; except that no barbed wire shall be allowed on lots that are adjacent to R-District boundaries. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

- A. Any structure that is located in a commercial District that abuts or confronts a lot or lots in a residential District shall conform to the following yard setback requirements unless otherwise specified by the provisions of an individual District:
- B. The minimum width of any side yard shall be five (5) feet;
- C. The minimum depth of any rear yard shall be ten (10) feet, or ten percent (10%) of the depth of the lot, whichever is greater;
- D. The minimum depth of any front yard, or the minimum width of any side yard on the street side, shall be the same required yard as specified for the adjacent residential District.
- E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District. (Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.04.060 Special Building Feature Requirements for C- Lots Abutting Residential Zones

- A. For lots that are located in a commercial District that abuts or confronts a lot or lots in a residential District the following building features shall conform to the specified requirements, unless otherwise specified by the provisions of an individual District;
- B. Display windows and customer entrances, other than required exits, shall be oriented in a manner so they do not face abutting lots in a residential District;
- C. Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a residential District;
- D. A solid wall or fence, measuring six (6) feet in height from existing grade, shall be erected at the lot line of an abutting lot in a residential District in order to provide screening;
- E. Exhaust air ducts shall be located or oriented in a manner which directs vented air flows away from any residential District, and equipment which mitigates odors shall be installed;

Chapter 23E.04: Lot and Development Standards

- F. The Board may approve an Use Permit reducing or waiving the requirements of this Section if it finds that any such requirement is unnecessary to minimize the effects of commercial uses on a lot in the residential District. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.08: Design Review

Chapter 23E.08

DESIGN REVIEW

Sections:

23E.08.010	Purpose
23E.08.020	Applicability
23E.08.030	Applicability of Design Review: Criteria
23E.08.040	Design Review Standards

Section 23E.08.010 Purpose

- A. The purposes of design review are to:
1. Encourage excellence in design and to ensure that new construction and alterations to existing buildings are compatible with the best elements of the existing character of the area, in order to provide a pleasing urban environment for Berkeley residents, pedestrians and building occupants;
 2. Consider a project in relation to its urban context and to focus on the subject matter included in the design guidelines.
- B. The design guidelines adopted by reference in this Ordinance are intended to give direction to Staff, the Design Review Committee, the Landmarks Preservation Commission (LPC), and the Board in reviewing proposed projects. The design guidelines are also intended to assist applicants in planning and design of their projects. The guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.
- C. Issues of design shall be considered separately from issues of use. Design review shall not address land use issues. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.08.020 Applicability

- A. The design review process and the design guidelines apply to the following:
1. Development within all commercial, manufacturing, mixed use and all other non-residential Districts;
 2. All commercial and mixed use projects in the R-4 District;
 3. All commercial, mixed use and community and institutional projects in the R-SMU and R-S Districts; and
 4. All mixed use and community and institutional projects in the R-3 District within the boundaries of the Southside Plan (see Section 23D.36.050 for area description).
- B. All projects for which a building or sign permit is required, involving exterior construction or alteration, the removal of public facades or any portion of those facades, or the erection or replacement of signs, are subject to design review.
- C. Permits for projects that are subject to design review may not be issued without design review approval, except that they may be issued conditional upon such approval occurring before the issuance of a building permit or for a permit for a sign as set forth in BMC 20.12.010 (the Sign Ordinance).
- D. No Zoning Certificate may be approved before approval of design review for such a pending Zoning Certificate application.

Chapter 23E.08: Design Review

- E. No building or sign permit may be issued, except in conformance with this Chapter. (Ord. 7210-NS § 16, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.08.030 Applicability of Design Review: Criteria

- A. For projects determined to be subject to Design Review under Section 23E.08.020, the design review standards under Section 23E.08.040 shall apply. For projects requiring a public hearing by the Zoning Adjustments Board, staff shall recommend to the Board whether Design Review should be conducted by staff or by the Design Review Committee. The responsibility for conducting Design Review shall be as set forth in Section 23E.12.020, as to whether the DRC, the LPC, or staff conducts Design Review.
- B. In making this determination, the Board or staff shall consider the following criteria:
1. Project size;
 2. Visibility;
 3. Degree of sensitivity of the community. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.08.040 Design Review Standards

- A. Design review shall consider the design of a project in relation to its urban context, and shall focus on the application of the design guidelines referred to in this Ordinance and other guidelines written in conformance with the guidelines which are formally adopted by the Planning Commission.
- B. When conducting design review the Design Review Committee, the LPC, or staff shall use the design guidelines adopted by the Planning Commission as its official policy.
- C. The Design Review Guidelines, or any portion thereof, may be amended by the Commission. The Board may comment to the Commission on such amendments.
- D. The entity responsible for design review shall consider the conformance of the application to the standards set forth in and promulgated under this Ordinance, and may either approve, deny or modify an application for design review. However, no modification may be made that is not consistent with any other requirement of this Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.12: Design Review Process

Chapter 23E.12

DESIGN REVIEW PROCESS

Sections:

23E.12.010	Application Requirements
23E.12.020	Responsibility for Design Review
23E.12.030	Design Review Timeline
23E.12.040	Design Review Procedures
23E.12.050	Design Review Committee Proceedings
23E.12.060	Staff Level Design Review Proceedings
23E.12.070	Review of Building Plans

Section 23E.12.010 Application Requirements

- A. Applications for projects subject to design review shall include such information as may be required by the Zoning Officer. Such information may include, but is not limited to, site plans, floor plans, building sections perpendicular to the street, exterior elevations, photographs of the subject or abutting properties, perspective or axonometric drawings and/or a model, description of building materials, material and/color samples, exterior lighting and fence plans, signage details and locations, and landscape and irrigation plans.
- B. Applications requiring design review shall be subject to a fee schedule as established by resolution of the City Council. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.020 Responsibility for Design Review

- A. The Landmarks Preservation Commission (LPC) has the responsibility for design review of projects which involve landmarks, structures of merit or buildings within a historic district, pursuant to Chapter 3.24.
- B. The Design Review Committee or design review staff has responsibility for design review of other projects which involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24. Such applications shall be referred to the LPC for comment, prior to the approval of the application.
- C. The Design Review Committee or design review staff has responsibility for design review of projects other than those noted in the two preceding paragraphs, which involve a building or a structure over forty (40) years old. In cases where a building or structure may have special architectural or historical significance, as determined by the secretary to the LPC, the project shall be referred to either the LPC or Staff by the design review staff for advisory comments prior to review by the Design Review Committee or design review staff.
- D. The Design Review Committee or design review staff has responsibility for design review of all projects subject to design review which are not described in the preceding paragraphs. When the secretary of the LPC determines that a building that is forty (40) years old or less may have special architectural and/or historical significance, the Design Review Committee or design review staff may refer the application to the LPC or its staff for comment.
- E. The Design Review Committee or design review staff has responsibility for design review of signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC's current List of Structures and Sites, and may refer such projects to the LPC or its staff for comments. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.12: Design Review Process

Section 23E.12.030 Design Review Timeline

- A. Design review for projects which are not subject to approval by the Board shall be completed within sixty (60) days of the date the application is complete. However, if the applicant modifies the application, or if the applicant submits a written time extension, the time period for review may be extended beyond sixty (60) days.
- B. Design review for projects which are subject to approval by the Board shall be required as condition of permit approval, and shall be completed within sixty (60) days of submittal of complete final design review plans or within the time limit required by state law, whichever is less. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.040 Design Review Procedures

- A. Projects requiring an AUP or a Zoning Certificate shall have Design Review conducted at the Staff level.
- B. The Zoning Officer may refer any project subject to Board review to the Design Review Committee, staff or the LPC. Design Review Committee procedures for preliminary design review and final design review may occur for matters involving Board action.
- C. Preliminary design review may be conducted by the Design Review Committee, staff, or the LPC prior to Board action on a project in order for design recommendations to be considered by the Board. Final design review action by the Design Review Committee, staff, or the LPC may occur after Board approval of the project, as a condition of a permit. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.050 Design Review Committee Proceedings

- A. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public; however, no public hearing is required. Review of a project by the Committee may be continued as necessary subject to the timeline set forth in this Chapter. The Committee shall adopt its own rules and procedures.
- B. Agendas for Design Review Committee meetings shall be posted on the bulletin board located in front of the Civic Center Building at least seventy-two (72) hours before the meeting. The agenda must list all projects and discussion items to be considered at that Committee meeting.
- C. Any person may appeal any action of the Committee to the Board by filing an appeal letter stating the reasons for the appeal, along with the required fee, with the Zoning Officer, within fourteen (14) days of the date of the Committee's action. Design Review appeals are limited to design issues. Any such appeals shall be scheduled on the Board agenda within forty-five (45) days of the appeal filing. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.060 Staff Level Design Review Proceedings

- A. When design review is conducted by Staff, Staff shall give notice of its review by posting a Notice of Design Review on or adjacent to the subject property, not fewer than fourteen (14) days prior to the date of Staff action. The notice shall describe the proposed use or construction, Staff's proposed decision on the design review application, the location and times at which the application may be reviewed by the public, the procedure and time period in which appeals to the Design Review Committee may be made, and the address where such appeals may be filed. Staff may consider public input during the design review process
- B. Any person may appeal any action of the staff to the Design Review Committee by filing an appeal letter stating the reasons for the appeal, along with the required fee, with the Zoning Officer, within fourteen (14) days of the date the Notice of Design Review is posted. Design review appeals are limited to design issues. Any such appeals shall be scheduled on the Committee agenda within forty-five (45) days of filing an appeal. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.12: Design Review Process

Section 23E.12.070 Review of Building Plans

Staff shall review all building permit applications subject to design review for compliance with the approved design review plans or conditions. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.16: Special Use Standards

Chapter 23E.16

SPECIAL USE STANDARDS

Sections:

23E.16.010	Hours of Operation
23E.16.020	Outdoor Uses
23E.16.030	Adult-Oriented Businesses
23E.16.040	Alcoholic Beverages
23E.16.050	Amusement Arcades
23E.16.060	Protected Uses
23E.16.070	Repealed by Ord. 7648-NS
23E.16.080	Non-Chartered Financial Institutions

Section 23E.16.010 Hours of Operation

- A. In the case of retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.
- B. In the case of 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 the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- C. In the case of 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. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.020 Outdoor Uses

Commercial and manufacturing uses shall be conducted solely within an interior of a building unless the regulations for the District in which such use is proposed otherwise specifically authorize such use to be conducted outside and any required Permit is obtained. The requirements of this Section apply to, but are not limited to, exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.030 Adult-Oriented Businesses

Adult-oriented Businesses are prohibited, unless authorized by an Use Permit, and may not be established within three hundred (300) feet of the boundary of a residential District, as measured along the public right-of-way, a radius of one thousand (1,000) feet from any other Adult-oriented Business, or a radius of six hundred (600) feet of any public park, public health clinic, public library, school or religious assembly use. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.040 Alcoholic Beverages

- A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way unless authorized by a Use Permit, except that:
 1. In Commercial Districts, Food Service Establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by a Zoning Certificate subject to the following alcoholic beverage service performance standards:

Chapter 23E.16: Special Use Standards

a. Licensing

- 1) The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control; and
- 2) Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations prior to issuance or transfer of a business license at this location.

b. Service

- 1) Beer and wine beverage service shall be "incidental" to the primary food service use, as defined in Berkeley Municipal Code (BMC) Zoning Ordinance Section 23F.04.010 Definitions;
- 2) Beer and wine service incidental to seated food service shall only be allowed at a "bona fide eating place" making "actual and substantial sales of meals" as determined and required by the California Department of Alcohol Beverage Control (ABC);
- 3) The sale of beer and wine for off-site consumption is prohibited;
- 4) Employees shall not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol;
- 5) All beer and wine served to patrons must be served in durable restaurant tableware. No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container;
- 6) There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption; and
- 7) Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

c. Operations

- 1) The food service establishment must operate at least five days a week;
- 2) The service of beer and wine shall be limited to normal meal hours (per ABC) during the restaurant's hours of operation;
- 3) During operating hours, 100% of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
- 4) At no time shall the operator rent the restaurant space to a third-party promoter;
- 5) The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
 - 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.
 - Surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity.

Chapter 23E.16: Special Use Standards

- 6) 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; and
 - 7) The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- d. Advertising
- 1) There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this code; and
 - 2) Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
- e. Training
- 1) Crime Prevention through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service; and
 - 2) All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with BMC 9.84.030 (Responsible Beverage Service Training) and complete 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 completed the course within the last twelve (12) months shall be exempt from this requirement.
2. In all other non-residential districts, Food Service Establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by an Administrative Use Permit.
- B. The following regulations apply to applications to commence or increase any alcoholic beverage sales or service, as defined in subdivision C, in any District other than food service establishments with incidental beer and/or wine service.
1. As part of the application, the applicant must provide a list of all establishments within a one thousand (1,000) foot radius which are in the same category of alcoholic beverage sales or service, as defined by the State Department of Alcoholic Beverage Control (ABC);
 2. If there is any other establishment, other than a food service establishment with incidental service of beer and/or wine, within a one thousand (1,000) foot radius of the site of the proposed use that is in the same category of alcoholic beverage sales or service, the Board shall not approve the application unless it makes all of the following findings of "Public Convenience or Necessity":
 - a. The proposed establishment will promote the City's economic health, contribute to General Plan or Area Plan policies or further District purposes;
 - b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales;
 - c. If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley as verified by the Police Department, the Board shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, the Board may consider the number,

Chapter 23E.16: Special Use Standards

frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors;

- d. If the proposed establishment is located within one thousand (1,000) feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses; and
 - e. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.
- C. Increases in alcoholic beverage uses or sales include, but are not limited to, adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine, extending the hours of operation of any establishment that sells or serves any alcoholic beverage and adding to the capacity, floor area or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages. An increase in alcoholic beverage uses or sales does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service. (Ord. 7635-NS § 1, 2019; Ord. 7383-NS § 1, 2014; Ord. 7191-NS § 23, 2011; Ord. 7130-NS § 1, 2010; Ord. 7105-NS § 1, 2009; Ord. 7023-NS § 3, 3/25/08; Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.050 Amusement Arcades

No Amusement Device Arcade shall be established within a radius of six hundred (600) feet of any primary or secondary school. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.060 Protected Uses

In Districts where a use is limited by number, or is classified as a protected use, a use shall be so classified only if it was legally established. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.16.070 Cannabis Dispensaries

Repealed by Ord. 7648-NS. (Ord. 7625-NS § 2, 2018; Ord. 7501-NS § 1, 2016; Ord. 7161-NS § 6, 2010; Ord. 7068-NS § 4 (part), 12/08/08)

Section 23E.16.080 Non-Chartered Financial Institutions

- A. Non-Chartered Financial Institutions shall be permitted only within General Commercial (C-1), South Area Commercial (C-SA), Telegraph Avenue Commercial (C-T) and West Berkeley Commercial (C-W).
- B. No more than four (4) Non-Chartered Financial Institutions as defined in 23F.04.010 shall be permitted in the City.
- C. Non-Chartered Financial Institutions may not be located within a radius of 1,320 feet of another Non-Chartered Financial Institution. (Ord. 7425-NS § 3, 2015)

Chapter 23E.18: Temporary Outdoor Uses on Private Property

Chapter 23E.18

TEMPORARY OUTDOOR USES ON PRIVATE PROPERTY

Sections:

23E.18.010	Purpose
23E.18.020	Definitions
23E.18.030	Applicability
23E.18.040	Requirements
23E.18.050	Operating Standards
23E.18.060	Remedies

Section 23E.18.010 Purpose

The purpose of this chapter is:

- A. To relax regulation on private property to support existing or new legally established businesses during the locally declared state of emergency related to COVID-19.
- B. To expand customer access to businesses during the locally declared state of emergency related to COVID-19.
- C. To establish requirements and operating standards associated with relaxed regulation during the locally declared state of emergency related to COVID-19. (Ord. 7730-NS § 1 (part), 2020: Ord. 7725-NS § 1 (part), 2020)

Section 23E.18.020 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

- A. Temporary Outdoor Use – An allowable temporary use on private property conducted by a legally established business in the same zoning district as it currently operates.
- B. Temporary Fixtures and Structures – Physical equipment necessary to safely conduct business outdoors. (Ord. 7730-NS § 1 (part), 2020: Ord. 7725-NS § 1 (part), 2020)

Section 23E.18.030 Applicability

- A. Regulation in this Chapter is valid during and up to 90 days after the locally declared state of emergency related to COVID-19.
- B. Regulation in this Chapter applies to existing and new businesses with a valid City of Berkeley Business License.
- C. Regulation in this Chapter applies to private property in all Commercial zoning districts, the Mixed Use Light-Industrial (MU-LI) district, the Manufacturing (M) district, and the Mixed Manufacturing (MM) district.
- D. The following businesses are not eligible to obtain a Zoning Certification for Temporary Outdoor Use:
 - 1. Delivery-Only (Cannabis) Retailers
 - 2. Liquor Stores / Wine Shops
 - 3. Adult-oriented Businesses

Chapter 23E.18: Temporary Outdoor Uses on Private Property

4. Smoke Shops
5. Firearm/Munitions Businesses. (Ord. 7730-NS § 1 (part), 2020: Ord. 7725-NS § 1 (part), 2020)

Section 23E.18.040 Requirements

- A. Legally established businesses authorized by the Governor's Executive Orders and Public Health Orders and the Public Health Orders of the City Health Officer, including appendices, to conduct outdoor business may conduct business outdoors on private property with a Zoning Certificate for Temporary Outdoor Use subject to compliance with the Executive Orders and Public Health Orders and other guidance related to phased reopening in Berkeley.
- B. Temporary Outdoor Uses may be conducted:
 1. On private property at the address listed on a business's City of Berkeley business license, and/or
 2. On private property at an address other than that listed on a business's City of Berkeley business license if the property is used solely for commercial purposes, is a vacant lot, or is a vacant building, and/or
 3. As a new stand-alone outdoor business, subject to obtaining a City of Berkeley Business License for the temporary location.
- C. The operator of the Temporary Outdoor Use must have the written permission of the property owner.
- D. An application for a Zoning Certificate for a Temporary Outdoor Use must be accompanied by site plan, business description and operational plan that certifies compliance with Section 23E.18.050 [Operating Standards]. (Ord. 7730-NS § 1 (part), 2020: Ord. 7725-NS § 1 (part), 2020)

Section 23E.18.050 Operating Standards

A Zoning Certificate does not constitute permission to operate unless businesses comply with the following regulations:

- A. Businesses shall comply with State and local regulations for normal business operations, including previously-imposed conditions of approval related to hours of operation and other conditions of approval not in conflict with the allowances in this ordinance, in addition to State regulations for outdoor operations.
- B. Businesses shall follow the Governor's Executive Orders Public Health Orders and the City of Berkeley Public Health Orders, including Appendices.
- C. Businesses shall comply with Americans with Disabilities Act (ADA) requirements and Berkeley Building Code (BMC Chapter 19.28).
- D. Temporary Outdoor Uses shall maintain a 10-foot setback adjacent to property in a Residential District.
- E. Food Service Establishments with incidental alcoholic beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- F. Sanitation
 1. Businesses shall provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
 2. Food service establishments shall provide restrooms and sanitation during hours of operation.

Chapter 23E.18: Temporary Outdoor Uses on Private Property

3. Food service establishments shall comply with Berkeley's Single Use Foodware and Litter Reduction Ordinance effective July 1, 2020.
- G. Operating Hours for Temporary Outdoor Uses shall be limited to 9 a.m. to 9 p.m. 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 the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- H. Safety:
 1. If Temporary Outdoor Uses are located within an active parking lot, businesses shall provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
 2. If Temporary Outdoor Uses fully occupy a parking lot, businesses shall provide temporary barriers to prevent vehicle traffic from entering the parking lot.
- I. Non-residential parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.
- J. Permits issued pursuant to this Section shall be posted in plain view within the commercial establishment for which the permit has been issued.
- K. Other Impacts
 1. Temporary Outdoor Uses shall be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to commercial noise and offensive odors.
 2. Smoking shall be prohibited in areas designated for Temporary Outdoor Uses as set forth in BMC Section 12.70.030 [Locations where smoking is prohibited].
 3. Temporary outdoor lighting fixtures must be oriented in a manner to direct the light away from adjacent parcels.
- L. Temporary Fixtures and Structures
 1. Temporary Fixtures and Structures intended to support Temporary Outdoor Uses must be identified on a site plan and show compliance with Section 23E.18.050 [Operating Standards].
 2. Movable fixtures such as tables/chairs, umbrellas, heaters, generators, trucks and trailers shall be stored in a secure place on private property when not in use.
 3. Fixed structures such as semi-permanent tents, shipping containers, portable sinks and toilets, shall occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use in order to allow for appropriate social distancing.
 4. The location, type and operation of Temporary Fixtures and Structures must comply with the requirements of and be inspected by the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department, as applicable. (Ord. 7730-NS § 1 (part), 2020: Ord. 7725-NS § 1 (part), 2020)

Section 23E.18.060 Remedies

- A. A Zoning Certificate for Temporary Outdoor Use may be revoked for non-compliance with any conditions designated herein and the Zoning Officer may issue a cease and desist order immediately.

Chapter 23E.18: Temporary Outdoor Uses on Private Property

- B. A Temporary Outdoor Use that meets the nuisance criteria set forth in Section 23B.64.020 [Nuisances Defined] shall be considered a public nuisance and is subject to abatement as set forth in Chapter 23B.64 [Nuisance Abatement]. (Ord. 7730-NS § 1 (part), 2020; Ord. 7725-NS § 1 (part), 2020)

Chapter 23E.20: Live/Work Provisions

Chapter 23E.20

LIVE/WORK PROVISIONS

Sections:

23E.20.010	Applicability of Regulations
23E.20.020	Purposes
23E.20.030	Business License Required
23E.20.040	Employment, Client and Customer Visits
23E.20.050	Portions of Unit Not to be Separately Rented or Sold
23E.20.060	Usable Open Space
23E.20.070	Change of Use to or from Live/Work Units
23E.20.080	Low Income Inclusionary Live/Work Units
23E.20.090	Findings

Section 23E.20.010 Applicability of Regulations

This Chapter applies to all Live/Work Units in any District in Berkeley. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.020 Purposes

The purposes of this Chapter are:

- A. To provide for the appropriate development of units which incorporate both living and working space.
- B. To provide flexibility as needed for the development of Live/Work Units, particularly within existing buildings.
- C. To provide locations where appropriate new businesses can start up.
- D. To provide opportunities for people to live in mixed use industrial and commercial areas where compatible with existing uses.
- E. To protect existing and potential industrial uses from conflicts which neighboring and nearby residential uses can cause.
- F. To protect existing and potential residential uses from increased detriment which neighboring and nearby industrial uses can cause.
- G. To permit Live/Work Units that function predominantly as workspaces and secondarily as residences.
- H. To assure that the division of space between living and working space within these units reflects the priority of workspace.
- I. To assure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial and residential buildings in their area, while remaining consistent with the predominantly workspace character of live/work buildings. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.030 Business License Required

At least one resident in each Live/Work Unit shall maintain at all times a valid City Business License and Zoning Certificate or Use Permit for a business on the premises. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.20: Live/Work Provisions

Section 23E.20.040 Employment, Client and Customer Visits

- A. Persons who do not reside in the Live/Work Unit may be employed in a Live/Work Unit if a Use Permit is obtained and the parking required in the District is provided.
- B. Subject to the provisions of Section C, client and customer visits to Live/Work Units are permitted if a Use Permit is obtained and the parking required in the District is provided.
- C. The Board may grant a Use Permit to establish or change the work use of a Live/Work Unit to medical offices or group instruction, subject to the finding in Section 23E.20.090.C. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.050 Portions of Unit Not to be Separately Rented or Sold

No portion of a Live/Work Unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.060 Usable Open Space

- A. A minimum of forty (40) square feet of usable open space shall be provided for each Live/Work Unit.
- B. For those Live/Work projects established through change of use of an existing building, the Board may approve a Use Permit to substitute interior space accessible to all residents for the required open space in the project, if it finds that it is not practical or desirable to provide exterior open space. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.070 Change of Use to or from Live/Work Units

- A. In the MU-LI District, Live/Work Units may not be changed to residential use, nor may the portion of the Live/Work Unit devoted to residential space be increased above the percentage of residential space when the unit was established.
- B. In Districts other than the MU-LI District, Live/Work Units may be changed to exclusively residential use or the residential floor area increased above forty percent (40%), only if all requirements for establishing a residential use are met.
- C. In Districts other than the MU-R District, Live/Work Units may be changed to exclusively commercial use, except as limited by Section D, provided that in the C-W District, only ground floor space may be so changed. All such changes are subject to Section 23C.08.030.A.3. In the MU-R District, Live/Work Units may not be changed to exclusively commercial use.
- D. Live/Work Units created by a change of use from residential use pursuant to this Section may not be changed to exclusively commercial use.
- E. In the C-W, MU-LI and MU-R Districts, the Board may grant a Use Permit to change residential units to Live/Work Units provided that the requirements of this Section are met.
- F. To change a dwelling unit to a Live/Work Unit, the finding required by Section 23C.08.030.A.3 must be made.
- G. In the C-W and MU-R Districts, in any change from residential to live/work, an area equal to at least seventy-five percent (75%) of the pre-existing residential floor area must be retained as living area within the Live/Work Unit, except pursuant to a Use Permit under Section 23E.20.090.B. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.20: Live/Work Provisions

Section 23E.20.080 Low Income Inclusionary Live/Work Units

- A. The developer of any project which creates five or more Live/Work Units shall provide low income inclusionary units which conform with the following provisions:
1. One inclusionary Live/Work Unit shall be provided for each five (5) Live/Work Units in the project, however there shall be no inclusionary requirement for a fraction of a unit;
 2. Inclusionary Live/Work Units shall be sold or rented at a price or rent affordable to a household with an income of eighty percent (80%) of the median income for the Oakland Primary Metropolitan Statistical Area;
 3. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units;
 4. Inclusionary Live/Work Units shall maintain affordable rents or resale prices under the provisions for increase set forth in the City-wide regulations concerning inclusionary units (Chapter 23C.12).
- B. Inclusionary Live/Work Units may, at the applicant's sole discretion, differ from the other Live/Work Units in the project in that the inclusionary units may be smaller than other Live/Work Units in the project as long as they meet the minimum size requirement for Live/Work Units in the District; may have a lower grade of finishes than other Units in the project; and may be located anywhere within the project. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.20.090 Findings

- A. To approve any Use Permit concerning a Live/Work Unit in any District, the Zoning Officer or Board must find that the proposed Use Permit is consistent with the purposes of this Chapter.
- B. In order to approve a Use Permit under Section 23E.20.070.G to change a residential unit to a Live/Work Unit and retain less than seventy-five percent (75%) of the pre-existing residential area as living area within the Live/Work Unit, the Board must find that:
1. There are special circumstances particular to the application which make it appropriate to retain less than seventy-five (75%) of the pre-existing residential area as living space within the Live/Work Unit;
 2. The exterior appearance of the Live/Work Unit has been designed to be compatible with adjacent and nearby residential uses.
- C. In order to approve a Use Permit to establish or change the work use of a Live/Work Unit to medical office or group instruction, the Board must find that adequate parking for the use has been provided. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.24: Sidewalk Cafe Seating

Chapter 23E.24

SIDEWALK CAFE SEATING

Sections:

- 23E.24.010 Purpose.**
23E.24.020 Termination of AUPs for Sidewalk Cafe Seating.
23E.24.030 Sidewalk Cafe Seating After Termination is Violation of Zoning Ordinance and Prohibited Encroachment.

Section 23E.24.010 Purpose.

- A. It is the intent of the City to discontinue issuance of new, and terminate existing, AUPs for Sidewalk Cafe Seating because the City did not intend to create a land use entitlement which ran with the land for this type of use, which occurs on the public right-of-way. The City also intends to eliminate the discretionary aspect of permit issuance for Sidewalk Cafe Seating and to simplify the permit process by incorporating specific, identifiable standards for issuance of permits.
- B. Accordingly, it is the purpose of this Chapter to establish rules under which Administrative Use Permits (AUPs) for Sidewalk Cafe Seating will be terminated and those individuals wishing to continue or establish Sidewalk Cafe Seating can obtain permits under Chapter 14.48. (Ord. 7204-NS § 1 (part), 2011)

Section 23E.24.020 Termination of AUPs for Sidewalk Cafe Seating.

- A. A Sidewalk Cafe Seating AUP shall terminate upon the abandonment, revocation, or termination of the existing Food Service Establishment with which the Sidewalk Cafe Seating is associated, the replacement of said use with another use, or the transfer of ownership of the Food Service Establishment with which it is associated. In the case of a transfer of ownership, the new owner of the Food Service Establishment may continue Sidewalk Cafe Seating by obtaining a permit under Chapter 14.48.
- B. Notwithstanding anything to the contrary in this Title, and specifically in Chapter 23B.60, after providing reasonable notice and an opportunity to be heard, the Zoning Officer shall terminate an AUP for Sidewalk Cafe Seating if they determine that the permittee has not complied with the terms of the AUP or any requirements of former Chapter 23E.24 or any other provision of Title 23 applicable to Sidewalk Cafe Seating. Any person whose AUP for Sidewalk Cafe Seating is terminated by the Zoning Officer under this Chapter may appeal that decision by filing a written appeal within 14 calendar days after written notice of the decision is mailed to them or may apply for a permit under Chapter 14.48. Such appeals shall be filed with the Zoning Officer, and shall be heard by the City Manager or their designee. The City Manager's decision shall be final. (Ord. 7204-NS § 1 (part), 2011)

Section 23E.24.030 Sidewalk Cafe Seating After Termination is Violation of Zoning Ordinance and Prohibited Encroachment.

Any continuation of Sidewalk Cafe Seating after an AUP has been terminated pursuant to this Chapter and which is not otherwise authorized as set forth in Chapter 14.48, or any other unpermitted Sidewalk Cafe Seating, including that in existence when the provisions of this Chapter were adopted, is a prohibited encroachment under Chapter 16.18. (Ord. 7204-NS § 1 (part), 2011)

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

Chapter 23E.28

OFF-STREET PARKING AND TRANSPORTATION SERVICES FEE

Sections:

23E.28.010	Purposes
23E.28.020	Applicability
23E.28.030	Off-site Parking Requirements
23E.28.040	Traffic Engineering Requirements
23E.28.050	Number of Parking Spaces Required
23E.28.060	Joint Use of Off-street Parking Spaces
23E.28.070	Bicycle Parking
23E.28.080	Location and Screening of Parking Spaces and Driveways
23E.28.090	In-lieu Parking Fee
23E.28.100	Transportation Services Fee
23E.28.110	Payment and Collection
23E.28.120	Use of TSF Funds
23E.28.130	Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, MU and R-SMU Districts
23E.28.140	Required Findings for Parking Reductions Under Section 23E.28.130 for C Districts
23E.28.145	Required Findings for Parking Reductions Under Section 23E.28.130 for M, MM and MU Districts

Note:

The following off-street parking and off-street loading space requirements shall apply to uses, buildings and structures located in C- (commercial), MU- (mixed use) and M- (manufacturing) Districts. In addition to the requirements of this Ordinance all off- street parking spaces, off-street loading spaces, access driveways, circulation patterns and ingress and egress connections to the public right-of-way shall conform to the City's Traffic Engineering requirements. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.010 Purposes

The purposes of the parking regulations in this chapter are:

- A. To efficiently allocate parking spaces in the City.
- B. To regulate the provision of off-street parking spaces for traffic-generating uses of land within the City.
- C. To reduce the amount of on-street parking of vehicles, and thus increase the safety and capacity of the City's street system. (Ord. 7751-NS § 18, 2021; Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.020 Applicability

- A. The requirements of this chapter apply to all uses commenced hereafter, to all buildings and structures hereafter constructed or moved onto a lot in a C-, M- or MU- District and to any modifications to existing uses and structures which enlarge or increase capacity, including, but not limited to, adding or creating dwelling units, guest rooms, floor area, seats or employees, except to the extent that provisions in the individual C-, M- or MU- District provide otherwise.
- B. No building, structure, alteration, fence, landscaping or other site feature may be constructed, erected, planted or allowed to be established that would impede access to any required off-street parking space. (Ord. 7751-NS § 19, 2021; Ord. 6856-NS § 3 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

Section 23E.28.030 Off-site Parking Requirements

- A. Any required off-street parking space which either is not located on the same lot with the structure or use it is to serve, or is not located in a joint use of parking arrangement, must be located on land owned or leased by the same owner as the land on which the structure or use is located.
- B. Any off-street parking space required by this chapter must be located within 300 feet from the structure or use it is intended to serve, except that leased off-street spaces beyond 300 feet may be allowed, if authorized by an Use Permit, except as otherwise provided in District regulations. This distance shall be measured from the nearest off-street parking space provided to the nearest point of the lot on which the use or structure to be served is located. Measurement shall be along public or private rights-of-way available for pedestrian access from the structure or use to the parking space.
- C. In the event that the required off-street parking is either located on leased property or is located in a lot for joint use of parking as set forth in Section 23E.28.060, a statement shall be recorded in the Office of the County Recorder that restricts the use of the property and designates the off-street parking that is to serve the other property. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking that is being provided in compliance with the requirements of the City, unless the restriction is removed by the City. Upon submission of satisfactory evidence either that other parking space meeting the requirements of this Ordinance has been provided or that the building or use has been removed or altered in use so as to not longer require the parking space, the City shall remove the restriction from the property.
- D. Any parking space required by this Ordinance that is located on leased property must meet the following requirements:
 - 1. The leased parking spaces are not necessary to satisfy any other City parking requirement;
 - 2. The term of the lease for the required parking spaces must be for the same period of time as the use of which the parking requirements apply, and must apply to any successor tenant or owner of the property;
 - 3. The lease of the parking spaces must apply to the normal hours of operation of the proposed use; and
 - 4. No parking space that is provided through a lease to meet the requirements of this Ordinance may be leased to more than one tenant. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.040 Traffic Engineering Requirements

- A. In addition to the requirements of this Ordinance, all off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City's Traffic Engineering requirements.
- B. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible and safe parking areas, and are adequately integrated with the City's overall street pattern and traffic flows.
- C. Dimensional requirements and standards for off-street parking spaces, driveway and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and the Zoning Adjustments Board.
- D. Notwithstanding any reduction in off-street parking spaces that may be granted for mixed use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces. (Ord. 6848-NS § 6 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

Section 23E.28.050 Number of Parking Spaces Required

- A. Off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on the same property or on property under the same ownership, may not be reduced below, or if already less than, may not be further reduced below, the requirements of this chapter for similar use or structure. However, required parking spaces may be removed to meet ADA compliance or traffic engineering standards.
- B. If the expected demand for parking spaces is found to exceed the minimum requirement, additional off-street parking may be required as a condition of approval on a Permit.
- C. When the formula for determining the number of required off-street parking spaces results in a requirement of a fractional space, any fraction below one-half shall be disregarded, and fractions including and over one-half shall be counted as requiring one parking space.
- D. Off-street parking space requirements may be satisfied by tandem off-street parking space(s) with the issuance of an AUP.
- E. Existing off-street parking spaces shall be counted towards meeting the overall parking requirements where new floor area is added to an existing site or project.
- F. When the number of off-street parking spaces required is based on the number of employees, it shall be based upon the shift or employment period during which the greatest number of employees are present.
- G. When the number of off-street parking spaces required is based on the floor area for a specified use, the definition of Floor Area, Gross as set forth in Sub-title 23F shall apply. In addition, unenclosed areas of a lot, including, but not limited to, outdoor dining areas, garden/building supply yards and other customer-serving outdoor areas for retail sales, shall also be counted toward the floor area for those commercial uses with specified off-street parking requirements. (Ord. 7751-NS § 20, 2021; Ord. 6856-NS § 4 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.060 Joint Use of Off-street Parking Spaces

- A. The Zoning Officer may approve an AUP to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:
 - 1. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
 - 2. The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
 - 3. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.
- B. When a building contains two or more uses, the total required number of off-street parking spaces shall be the sum of the requirements for each use computed separately. Off-street parking spaces for one use may not be considered as providing required off-street parking spaces for any other use, except as specified in the foregoing paragraph. (Ord. 6794-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.070 Bicycle Parking

- A. Bicycle parking spaces required by each District's bicycle parking requirements shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer. Bicycle parking shall be located in accordance to the design review guidelines.

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

- B. Except in C-E and C-T Districts, Bicycle Parking shall be provided for new floor area or for expansions of existing industrial, commercial, and other non-residential buildings at a ratio of one space per 2,000 square feet of gross floor area.
- C. For residential projects, including the residential portion of mixed-use projects, of five or more units, in all districts, bicycle parking shall be provided as follows:

Use	Long Term Parking ¹ Requirement	Short-Term Parking ¹ Requirement
Dwelling Units (1 to 4 units)	None required	None required
Dwelling Units (5 units or more)	1 space per 3 bedrooms	2, or 1 space per 40 bedrooms, whichever is greater
Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing)	2, or 1 space per 2.5 bedrooms, whichever is greater	2, or 1 space per 20 bedrooms, whichever is greater
¹ Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i> , or as subsequently amended by the Transportation Division.		

- D. The Zoning Officer in consultation with the City Traffic Engineer may modify the requirement with an Administrative Use Permit for Tourist Hotels in the C-DMU District. (Ord. 7751-NS § 21, 2021; Ord. 7475-NS § 3, 2016; Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.080 Location and Screening of Parking Spaces and Driveways

- A. Access to new parking areas for commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.
- B. No off-street parking spaces on the ground level are permitted within 20 feet of the street frontage of the subject lot, unless the parking is entirely within a building with walls. However, in the case of corner lots, such parking may be permitted within 20 feet of the street side property line along the edge of the frontage of the secondary street, if authorized by a Use Permit.
- C. The difference in elevation between an off-street parking space and the finished grade on other areas of the lot may not exceed five feet at any point. Where such difference in elevation is greater than three feet, and the parking space is lower than finished grade, the space may not be located closer than four feet to any lot line. Where the space is higher than finished grade it may not be located closer than six feet to any lot line.
- D. Screening must be provided for two or more off-street parking spaces in a manner which effectively screens parked vehicles from view from buildings and uses on adjacent, abutting and confronting lots, but does not interfere with pedestrian safety. Such screening may consist of a wall, fence or evergreen shrubbery hedge that is placed in landscaped strips, as described below. In the case of parking areas adjacent to a public right-of-way or front lot line, such wall, fence or hedge must be at least three feet but not more than four feet in height. In the case of parking areas adjacent to rear or side lot lines, such features must be at least four feet but not more than six feet in height.
- E. All paved areas for off-street parking spaces, driveways and any other vehicle-related paving must be separated from an adjacent lot line by a landscaped strip that is to be used for screening purposes as per this section. The minimum width of such strip must be two feet at any point for areas adjacent to rear or side lot lines and three feet for areas adjacent to a public right-of-way or a front lot line.

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

- F. In addition, in the case of parking areas of four or more off-street spaces, the parking area must be separated from an adjacent rear or side lot line by a landscaped strip of four feet in width, as averaged along the applicable property line.
- G. Driveways which are designed to serve two adjacent lots and which span a side lot line are exempt from the landscape strip requirements along that side lot line.

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

- H. No driveway may exceed 20 feet in width at any property line abutting a street or one-half of the width of the street frontage of the lot, whichever is less, unless so authorized by an AUP.
- I. Parking lots used for exclusively residential parking are subject to Chapter 23D.12. (Ord. 6856-NS § 5 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.090 In-lieu Parking Fee

- A. In those commercial and manufacturing Districts in which a public parking fund exists for the purpose of developing public parking, applicants may make an in-lieu payment for construct, maintenance and operation of public off-street parking instead of providing off-street parking spaces as required by this chapter. The fee shall be pursuant to resolution of the Council. In-lieu payments under this section shall be used for the purposes set forth in each Ordinance establishing such public parking funds.
- B. In-lieu fees may, at the applicant's option, be paid in a lump sum or in annual installments as specified in each ordinance establishing a parking fund, and may be adjusted annually for inflation. If paid annually, the first annual payment of an in-lieu fee shall be due as a condition of occupancy, and subsequent payments shall be due on January 31 of succeeding years. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.100 Transportation Services Fee

A Transportation Services Fee (TSF) may be required for all new construction of gross floor area in commercial and manufacturing Districts, pursuant to resolution of the Council. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.110 Payment and Collection

- A. All TSF payments shall be made to the Finance Department and deposited into the City's traffic/transportation mitigation fund.
- B. The Transportation Services Fee shall be collected in the form of annual payments based on the fee rate applicable to each District multiplied by the square feet of gross floor area of new construction, and may be adjusted annually for inflation. TSF payments shall be made for 30 years from the issuance of a certificate of occupancy for any new floor area. The first annual payment of the TSF shall be due as a condition of occupancy and subsequent payments shall be due on January 1 of each succeeding year for 29 years. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.120 Use of TSF Funds

TSF funds shall be used to purchase transit or paratransit passes, coupons and tickets to be made available at a discount to employees and customers and to promote and support incentives for employee ride sharing. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.28.130 Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, MU and R-SMU Districts

- A. No change of use shall be required to meet the off-street parking requirements of either the district or this chapter unless 1) the structure has been expanded to include new floor area or 2) in the M, MM, MU and R-SMU districts, the use is changed to one with a higher numerical parking standard than the district minimum. When the new use has the same or a lower numerical parking standard than the previous use, the new use shall not be required to meet the off-street parking requirements of the district and this chapter.
- B. No new floor area shall be created through building expansions, unless it satisfies the parking requirements of the district and this chapter. However, the Zoning Officer may modify the parking requirements for new

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

floor area for expansions of existing buildings with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145.

- C. In the M, MM, MU and R-SMU districts, for a change of use of existing floor area where the new use has a higher numerical parking standard than the existing use as listed in the district provisions, the following applies:
1. The new use must provide the incremental difference between the two numerical parking standards, which must meet all other parking requirements.
 2. A higher numerical parking standard may be reduced to the district minimum and other parking requirements may be modified with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145. If the new use requires a Use Permit, the Zoning Adjustments Board shall approve, deny or modify the request, subject to the findings in Section 23E.28.140 or 23E.28.145. If the numerical parking reduction is approved, no additional off-street parking is required. (Ord. 7635-NS § 2, 2019; Ord. 7210-NS § 17, 2011; Ord. 7167-NS § 1, 2011; Ord. 6856-NS § 6 (part), 2005)

Section 23E.28.140 Required Findings for Parking Reductions Under Section 23E.28.130 for C Districts

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the findings required by Section 23B.28.050 and/or 23B.32.040 as applicable, in addition to any findings required in this section to the extent applicable.
- B. To approve any reduction of the off-street parking spaces under Section 23E.28.130, or under other sections that refer to this section, the Zoning Officer or Zoning Adjustments Board must find that the reduction will not substantially reduce the availability of on-street parking in the vicinity of the use. The Zoning Officer or Board must also find that at least one of each of the two groups of conditions below apply:
1. a. The use is located one-third of a mile or less from a Bay Area Rapid Transit (BART) station, intercity rail station or rapid bus transit stops; or
 - b. The use is located one-quarter of a mile or less from a publicly accessible parking facility, the use of which is not limited to a specific business or activity during the use's peak parking demand; or
 - c. A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential streets, at least two times the number of spaces requested for reduction are available through on-street parking spaces for at least two of the four hours of the use's peak parking demand; or
 - d. The use includes one of the following neighborhood-serving uses: Retail Products Store(s), Food Service Establishments, and/or Personal/Household Service(s). These uses include, but are not limited to: Dry Cleaning and Laundry Agents, Drug Stores, Food Products Stores, Household Items Repair Shops, and/or Laundromats; and
2. a. The parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements and activity, or similar policies; or
- b. There are other factors, such as alternative transportation demand management strategies or policies in place, that will reduce the parking demand generated by the use.
- C. To approve any modification of the parking requirements, unrelated to the number of spaces, under Section 23E.28.130 or under other sections that refer to that section, the Zoning Officer or Zoning Adjustments Board must find that the parking requirement modification allows the continued use of an existing parking supply

Chapter 23E.28: Off-Street Parking and Transportation Services Fee

and that meeting the parking requirements is not financially feasible or practical. (Ord. 7167-NS § 2, 2011; Ord. 6856-NS § 7 (part), 2005)

Section 23E.28.145 Required Findings for Parking Reductions Under Section 23E.28.130 for M, MM, and MU Districts

- A. In order to approve any permit under this chapter, the Zoning Officer or Board must make the findings required by Section 23B.28.050 and/or 23B.32.040 as applicable, in addition to any findings required in this section to the extent applicable.
- B. To approve any reduction of the off-street parking spaces in any M, MM or MU District under Section 23E.28.130, or under other sections that refer to that section, the Zoning Officer or Zoning Adjustments Board must find that the reduction will not substantially reduce the availability of on-street parking in the vicinity of the use. The Zoning Officer or Board must also find that at least one of each of the two groups of conditions below apply:
1. a. The use is located one-third of a mile or less from a rapid bus transit stop, an intercity rail station or a bus stop serving at least four lines; or
 - b. The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available therein to mitigate the reduction in parking for the use; or
 - c. A parking survey conducted under procedures set forth by the Planning Department finds that within [500] feet or less of the use, on non-Residential District streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use; and
2. a. The parking requirement modification will implement the Goals and Policies of the West Berkeley Plan related to improvement and support for alternative transportation, pedestrian improvements and activity, or similar policies; or
 - b. There are other project-specific transportation demand management strategies or policies in place, such as but not limited to: employer sponsored transit subsidies, car sharing programs, bicycle storage, and flexible work schedules.
- C. To approve any modification of the parking requirements unrelated to the number of spaces, under Section 23E.28.130 or under other sections that refer to that section, the Zoning Officer or Zoning Adjustments Board must find that the parking requirement modification allows the continued use of an existing parking supply and that meeting the parking requirements is not financially feasible or practical.
- D. This section shall apply only to allow parking reductions for changes of use in spaces of 2500 square feet or less, that were in existence as of January 1, 2011. (Ord. 7167-NS § 3, 2011)

Chapter 23E.32: Loading Space Requirements

Chapter 23E.32

LOADING SPACE REQUIREMENTS

Sections:

- 23E.32.010 Off-Street Loading Spaces**
- 23E.32.020 Off-Street Loading Spaces for Commercial Districts**
- 23E.32.030 Off-Street Loading Spaces for Manufacturing and Mixed Use Districts**

Section 23E.32.010 Off-Street Loading Spaces

- A. Off-street loading spaces for the uses listed in each commercial and manufacturing District's provisions shall be provided at the quantity specified per amount of gross floor area as required in each District's provisions and subject to the following limitations:
1. Any required off-street loading space must be at least 12 feet wide and 25 feet long and have a minimum vertical clearance of 14 feet.
 2. All required off-street loading spaces must be located on the same lot as the structure or use the spaces are designed to serve.
 3. No off-street parking space required under this Ordinance may be used to satisfy the requirements for an off-street loading space.
 4. Any off-street loading space required by this Ordinance must have adequate means of access from a street or alley, and both the space and access driveway must be paved with a durable, dustless material, so as to be usable under all weather conditions.
 5. No off-street loading space may be located within 35 feet of any lot in any R District unless such space is located wholly within an enclosed building or is screened from such residential lot by a wall, hedge or fence not less than six feet in height.
- B. See Chapter 23E.56.080 C-T Telegraph Avenue Commercial District Provisions for district specific exception to the off-street loading spaces standards.
- C. For all industrial and commercial districts other than C-T, the Zoning Officer in consultation with the City Traffic Engineer may issue an Administrative Use Permit to modify the 23E.32 Off-Street Loading Spaces standards. (Ord. 7475-NS § 1, 2016; Ord. 6854-NS § 14 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.32.020 Off-Street Loading Spaces for Commercial Districts

Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall provide off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of commercial space and one space for each additional 40,000 square feet of gross floor area of commercial space, except to the extent that provisions in the individual Districts provide otherwise. (Ord. 7210-NS § 18, 2011; Ord. 6856-NS § 8 (part), 2005)

Section 23E.32.030 Off-Street Loading Spaces for Manufacturing and Mixed Use Districts

Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall provide off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of commercial or manufacturing space and one space for each additional 25,000 square feet of gross floor area of commercial or manufacturing space thereafter. (Ord. 6856-NS § 9 (part), 2005)

Chapter 23E.36: C-1 General Commercial District Provisions

Chapter 23E.36

C-1 GENERAL COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.36.010	Applicability of Regulations
23E.36.020	Purposes
23E.36.030	Uses Permitted
23E.36.040	Reserved
23E.36.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.36.060	Use Limitations*
23E.36.070	Development Standards*
23E.36.080	Parking -- Number of Spaces
23E.36.090	Findings

Section 23E.36.010 Applicability of Regulations

The regulations in this chapter apply in all C-1 Districts with the exception of standards that are specifically identified as applying to the University Avenue Strategic Plan Overlay (refer to Official Zoning Map for location). In addition, the general provisions in Sub-title 23C shall apply to all C-1 areas. (Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23E.36.020 Purposes

The purposes of the General Commercial (C-1) Districts are to:

- A. Implement the General Plan's designations for Avenue Commercial areas;
- B. Provide locations for a wide variety of activities along thoroughfares;
- C. Encourage development in underutilized neighborhood and community shopping areas; and
- D. Promote development compatible with adjacent commercial and residential areas.
- E. Implement permitted use regulations and building development standards for the University Avenue Strategic Plan Overlay area, as stated in the University Avenue Strategic Plan Goals, to:
 1. Increase public safety for residents, merchants, and customers.
 2. Revitalize the University Avenue corridor through appropriate economic development and housing.
 3. Protect and improve neighborhood quality of life.
 4. Encourage more pedestrian-oriented development and an appropriate mix of uses to improve neighborhood identity.
 5. Enhance University Avenue as a gateway to the City, a series of neighborhoods, and the downtown.
 6. Coordinate and enhance public transit systems, pedestrian access, and bicycle circulation.
 7. Encourage a concentration of commercial activity at the designated nodes. (Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.36: C-1 General Commercial District Provisions

Section 23E.36.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.36.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	AUP	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Offices		
Financial Services, Retail (Banks)	AUP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC*	Subject to parking requirements; see Table 23E.36.080

Chapter 23E.36: C-1 General Commercial District Provisions

<i>Table 23E.36.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Table 23E.36.080
Other Professionals, and Government, Institutions, Utilities	ZC*	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments Under 1,500 s.f. Over 1,500 s.f.	ZC AUP	Food Service Establishments that exclusively sell food for offsite consumption are prohibited at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC*	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts. Prohibited within the University Avenue Strategic Plan Overlay
Automobile Repair and Service, including Parts Service	AUP	Prohibited within the University Avenue Strategic Plan Overlay
Automobile Sales and Rentals	AUP	Prohibited within the University Avenue Strategic Plan Overlay

Chapter 23E.36: C-1 General Commercial District Provisions

<i>Table 23E.36.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Automobile Washes, Mechanical or Self-Service	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores, including Sales and/or Service	UP(PH)	Prohibited within University Avenue Strategic Plan Overlay
Recreational Vehicle and Trailers Sales and Rental, including Boats	AUP	Prohibited within University Avenue Strategic Plan Overlay
Tire Sales/Service Stores	UP(PH)	Prohibited within University Avenue Strategic Plan Overlay
Parking, Outdoor and Exterior Service Window Uses		
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Providing service to customers in their cars. See definition in Sub-title F. Prohibited within University Avenue Strategic Plan Overlay
Activities or Storage outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Parking Lots Five or fewer Off-street Parking Spaces More than five Off-street Parking Spaces	ZC UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Sections 23E.36.070.D and 23E.36.080.E. Within the University Avenue Strategic Plan Overlay areas, the following uses are not allowed on the ground floor of a Mixed Use building unless a Use Permit is issued pursuant to Sections 23E.36.090.A and B: residential units and uses (other than parking) which serve the residential uses, e.g., leasing and management of the building

Chapter 23E.36: C-1 General Commercial District Provisions

<i>Table 23E.36.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E. Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted within University Avenue Overlay Mixed Use areas
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.36.080

Chapter 23E.36: C-1 General Commercial District Provisions

<i>Table 23E.36.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10.
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Wireless Telecommunications Facilities		Subject to the requirements and findings of Section 23C.17.100
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	
All Other Telecommunication Facilities	UP(PH)	

Chapter 23E.36: C-1 General Commercial District Provisions

<i>Table 23E.36.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 3,000 sq. ft. shall require an AUP.	

- B. Any use not listed that is compatible with the purposes of the C-1 District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-1 District shall be prohibited.

- C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.36.030. (Ord. 7753-NS § 13, 2021; Ord. 7696-NS § 11, 2020; Ord. 7689-NS § 1, 2020; Ord. 7648-NS § 2, 2019; Ord. 7635-NS § 3, 2019; Ord. 7625-NS § 4, 2018; Ord. 7620-NS § 11, 2018; Ord. 7599-NS § 20, 2018; Ord. 7561-NS § 6, 2017; Ord. 7521-NS § 11, 2017; Ord. 7425-NS § 4, 2015; Ord. 7322-NS § 6, 2013; Ord. 7204-NS § 3, 2011; Ord. 7191-NS § 1, 2011; Ord. 7155-NS § 9, 2010; Ord. 7129-NS § 9, 2010; Ord. 7072-NS § 1, 2009; Ord. 6848-NS § 7 (part), 2005; Ord. 6830-NS § 2 (part), 2004; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6514-NS § 1, 1999; Ord. 6478-NS § 4 (part), 1999)

Section 23E.36.040 Reserved

Section 23E.36.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

- A. Gross floor area of 5,000 square feet or more shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.

- B. If the space affected by a conversion within an existing building contains 5,000 square feet or more of gross floor area, an Administrative Use Permit is required. (Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23E.36.060 Use Limitations*

- A. No commercial use shall operate except between the hours of 7:00 a.m. and 12:00 midnight, except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.

- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading, in Table 23E.36.030.

- C. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading, in Table 23E.36.030.

Chapter 23E.36: C-1 General Commercial District Provisions

D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters 23E.16 and 23E.20, in addition to the requirements of this District. (Ord. 7425-NS § 5, 2015; Ord. 7191-NS § 2, 2011; Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.36.070 Development Standards*

A. The Floor Area Ratio (FAR) shall not exceed three, except that within University Avenue Strategic Plan Overlay areas, the Floor Area Ratio (FAR) shall satisfy the following requirements:

<u>Overlay Areas</u>	Maximum Floor Area Ratio (FAR) University Avenue Overlay Area*	
	<u>North Side Location**</u>	<u>South Side Location**</u>
Avenue Mixed Use Areas	2.2	2.5
Node Areas	2.5	3.0

*The Maximum Floor Area Ratio (FAR) is tailored to respect the height and setback provisions of the University Avenue Strategic Plan, as incorporated into Sections 23E.36.070.B and C.
 **North Side refers to the properties on the north side of University Avenue and South Side refers to the properties on the south side of University Avenue.

B. The height for a Main Building shall not exceed the following limits, and shall satisfy the following requirements:

1. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay areas:

<u>Use type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Commercial only	40	2
Mixed Use	40	3*
Mixed Use with Use Permit**	50	4*
Other Uses	40	2
Residential only	35	3

*In Mixed Use buildings, the third and higher floors must be used for residential purposes
 **A building which is used for mixed use (commercial and residential) purposes may be constructed to a height of four stories and 50 feet, subject to obtaining a Use Permit

2. For those portions of the District within University Avenue Node Overlay areas:

<u>Use type</u>	<u>Maximum Height (ft.)</u>	<u>Maximum Stories (number)</u>	<u>Minimum Height (ft.)</u>	<u>Minimum Stories (number)</u>
Commercial only	40	3	30	2
Mixed Use**	48	4*	30	2
Other Uses	40	3	30	2

*In Mixed Use buildings, the second and higher floors must be used for residential purposes.
 **The following uses are not allowed on the ground floor of a Mixed Use building unless a Use Permit is issued (see Use and Required Permits Table 23E.36.030): residential units and uses (other than parking) which serve the residential uses, e.g. leasing and management of the building.

Chapter 23E.36: C-1 General Commercial District Provisions

3. For those portions of the District in University Avenue Mixed Use Overlay areas:

<u>Use type</u>	<u>Maximum Height (ft.)</u>	<u>Maximum Stories (number)</u>	<u>Minimum Height (ft.)</u>	<u>Minimum Stories (number)</u>
Commercial only	36	3	30	2
Mixed Use**	36	3*	30	2
Other Uses	36	3	30	2
Residential only	36	3	30	2

*In Mixed Use buildings, the second and higher floors must be used for residential purposes.
 **The following uses are not allowed on the ground floor of a Mixed Use building unless a Use Permit is issued (see Use and Required Permits Table 23E.36.030): residential units and uses (other than parking) which serve the residential uses, e.g. leasing and management of the building.

C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

1. In areas within the University Avenue Strategic Plan Overlay, when a lot abuts or confronts a lot in a residential zone and the front yard of the lot is not on University Avenue, the requirements of Sections 23E.04.050.B and D shall not apply. In addition, the following setbacks apply throughout the University Avenue Strategic Plan Overlay.
 - a. Solar Rear Yard Setback: Buildings on the north side of University Avenue shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).
 - b. Privacy Rear Yard Setback: Buildings on lots abutting a residentially zoned lot along the south side of University Avenue shall be set back from the rear property line an average of 20 feet, i.e., a rear yard shall be maintained with a minimum area equal to the width of the lot (in feet) multiplied by 20 feet. The minimum depth of any rear yard shall be ten feet, or 10% of the depth of the lot, whichever is greater, as provided in Section 23E.04.050.C. The ZAB may approve a Use Permit to reduce the 20 foot average and ten foot minimum setback provisions to a minimum of six feet on the first floor provided that the square footage added on the first floor by this reduction in setback is utilized to increase the average 20 foot setback on higher floors to facilitate the privacy of abutting residentially zoned lots.
 - c. Ground-Level Setback on University Avenue for First-Floor, Non-Residential Uses: Buildings shall provide an average two-foot setback at the ground level of the project and a minimum two-foot setback at all sidewalk pedestrian entries.
 - d. Front Yard Setback for Residential-Only Projects: For all floors, buildings shall provide an average two-foot setback. A maximum setback of ten feet is permitted provided that this space is used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor.
 - e. Side Yard Setbacks: No setback is required.
 - f. Street Side Setbacks: For all floors, the setback shall be a minimum of two feet average.
 - g. Setbacks for Lots Fronting Side Streets on the South Side of University Avenue: When a lot in the University Avenue Strategic Plan Overlay area fronts on a side street rather than University Avenue, the yard requirements of Section 23E.04.050 shall apply unless the lot is consolidated into a single project with the adjacent University Avenue lot. In that case, the Project will conform to the setback standards of Section 23E.36.070.C.2.b through f.

Chapter 23E.36: C-1 General Commercial District Provisions

- D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the Off-street Parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements, except that the Board may issue a Use Permit to modify the Off-street Parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.36.090.C.
- E. Exclusive Residential Uses shall be subject to the building site area, height, yard, coverage, Usable Open Space and parking requirements of the R-3 District standards (height for R-3 District is the same as the standards set forth in Section 23E.36.070.B for residential buildings); except that the Board may issue a Use Permit to modify any R-3 requirement where it finds such modification is necessary to promote any of the general purposes set forth in Section 23E.36.090.C.
- F. Within the University Avenue Strategic Plan Overlay area, additional development standards shall be applicable. The ZAB may approve a Use Permit to modify these setback provisions if it makes the findings in Section 23E.36.090.E and F.
 - 1. All Mixed Use, Commercial and Other Project types shall provide ground level commercial uses as follows:
 - a. All Projects within the University Avenue Strategic Plan Overlay area, except Residential-Only Projects, shall have ground level commercial space with a minimum of 12 feet clear floor to ceiling height, and flexibility to enable the commercial space to be divided or assembled;
 - b. All Projects within the Avenue Mixed Use Overlay area, except Residential-Only Projects, shall provide ground level commercial uses equivalent to a minimum area of 15% of the Project land area. The minimum area may be reduced to 10% of the Project land area by the ZAB with a Use Permit, subject to the findings in Section 23E.36.090.E. The commercial uses shall occupy a minimum of 50% of the Project' s University Avenue frontage. The minimum frontage requirement may be reduced by the ZAB with a Use Permit subject to findings in Section 23E.36.090.F;
 - c. All Projects within the Node Overlay areas shall provide ground level commercial uses equivalent to a minimum area of 30% of the Project land area. The minimum area may be reduced to 20% of the Project land area by the ZAB with a Use Permit, subject to findings in Section 23E.36.090.E. The commercial uses shall occupy a minimum of 75% of the Project' s University Avenue frontage. The minimum frontage requirement may be reduced by the ZAB with a Use Permit, subject to findings in Section 23E.36.090.F; and
 - d. Of the required ground floor commercial uses in projects in the Node Overlay areas, no less than 75% shall be in permitted Retail Sales, and/or Personal and Household Services, and/or Food Service with the remainder allowed in other permitted commercial uses and/or Offices. The minimum percentage of required Retail Sales, and/or Personal and Household Services, and/or Food Services may be reduced to no less than 50% by the ZAB with a Use Permit, subject to findings in Section 23E.36.090.E. Office uses shall be limited to no more than 25% of the ground floor commercial space requirement.
 - 2. All Residential-Only Projects within the University Avenue Strategic Plan Overlay area shall limit ground level parking uses directly fronting on University Avenue to no more than 25% of the Project' s University Avenue frontage. All parking garage walls adjacent to University Avenue or side streets shall be articulated through design elements or material detailing to avoid blank walls extending more than 12 feet along the University Avenue or side street frontage.

Chapter 23E.36: C-1 General Commercial District Provisions

3. All Mixed Use and Residential-Only Projects within the University Avenue Strategic Plan Overlay area shall provide a portion of the required open space for residential units in locations that enhance the Project entries and contribute to the enhancement of the University Avenue frontage.
 - a. A minimum of 10% of the required open space shall be located at the street level or on a parking podium and directly connected to the Project entries at the street level and accessible to the occupants of the building; and
 - b. A minimum of 75% of the required open space shall be open to the sky.
4. Projects within the University Avenue Strategic Plan Overlay area with at least 100 feet of University Avenue frontage shall provide pedestrian-oriented open spaces and improvements such as street level plazas or entry courtyards open to the sidewalk equal in area to 1% of the Project land area. The street level plaza or entry courtyard shall have a minimum width and length of six feet.
5. Projects within the University Avenue Strategic Plan Overlay area shall provide sidewalk, curb and gutter, and street corner bulb-out improvements as necessary to comply with the current standards of the appropriate department designated by the City Manager:
 - a. All Projects with side street frontages shall provide bulb-outs to promote safe pedestrian street crossing along University Avenue in an east-west direction if determined by the appropriate department designated by the City Manager.
 - b. All Projects within the Node Overlay areas shall provide bulb-outs to promote safe pedestrian street crossings of University Avenue in the north-south direction if determined by the appropriate department designated by the City Manager.
 - c. All Projects within the University Avenue Strategic Plan Overlay area shall provide the necessary sidewalk, curb and gutter replacement and/or repair to the satisfaction of the appropriate department designated by the City Manager.
6. Projects within the University Avenue Strategic Plan Overlay area shall provide sidewalk amenities while maintaining an accessible sidewalk path to comply with the current standards of the appropriate department designated by the City Manager.
 - a. All Projects shall provide pedestrian-scaled lighting to illuminate the sidewalk areas along University Avenue; and
 - b. All Projects shall provide new street trees and grates along the University Avenue and side street frontages; and
 - c. All Projects with at least 100 feet of University Avenue frontage shall provide durable benches and bicycle racks subject to Design Review approval. (Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.36.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

Chapter 23E.36: C-1 General Commercial District Provisions

- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.36.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

<i>Table 23E.36.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Hospitals	One per each four beds plus one per each three employees
Hotels	One per each three guest/sleeping rooms or suites plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room plus one space for owner or manager*
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080
*Required parking shall be on same lot as building it serves.	

- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- D. A Transportation Services Fee (TSF) shall be paid per square foot of newly constructed gross floor area in an amount set by City Council Resolution, and in accordance with the procedures and purposes of Chapter 23E.28.
- E. The number of Off-street Parking Spaces required for the commercial portion of Mixed Use projects, which combine Retail Products Stores and/or Personal Household Services, and Multi-family Residential Uses within the same building or located on the same lot (or contiguous lots as part of the same project) may be modified or waived by the Board by approval of a Use Permit, in lots on blocks adjacent to University Avenue and lots north of University Avenue, south of Delaware Street, east of Bonita Avenue and west of Oxford Street.
- F. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7635-NS § 4, 2019; Ord. 6856-NS §10 (part), 2005; Ord. 6848-NS §§ 8-9 (part), 2005; Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Section 23E.36.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable.
- B. A proposed use or structure must:
1. Be compatible with the purposes of the District;
 2. Be compatible with the surrounding uses and buildings;
 3. Not interfere with the continuity of retail and service facilities at the ground level;

Chapter 23E.36: C-1 General Commercial District Provisions

4. Not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.
- C. For any Use Permit under Section 23E.36.070.D or E, the proposed use or structure must satisfy at least one of the following general purposes:
1. To encourage use of the ground floor for commercial purposes where appropriate.
 2. To encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building.
 3. To facilitate the construction of residential or tourist hotel uses where appropriate.
 4. To permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
- D. Any reduction of the off-street parking requirements under Sections 23E.36.080.E or 23E.28.130, is subject to the findings in Section 23E.28.140.
- E. In the University Avenue Strategic Plan Overlay area, to approve any reduction of the area of ground level commercial use required along University Avenue under Section 23E.36.070.F.1.b, c and d, the ZAB must find that all of the following conditions exist:
1. The Project lot is less than 7,500 square feet;
 2. The Project lot is an internal lot without side street access;
 3. Parking cannot be efficiently provided at grade and Project parking conflicts with the requirement for ground floor commercial space;
 4. The reduced commercial area will result in a Project with an enhanced commercial configuration; and
 5. The reduced commercial area promotes pedestrian-oriented activity along University Avenue through the mix of commercial uses, and/or the commercial uses will remain open beyond standard business hours, such as into the evening and on weekends, and the uses shall be visible from University Avenue frontage.
- F. In the University Avenue Strategic Plan Overlay area, to approve any reduction of the area of ground level commercial frontage requirements along University Avenue under Section 23E.36.070.F.1.b and c, the ZAB must find that one or more of the following conditions exist:
1. The required egress to the Project conflicts with the requirement; or
 2. The minimum driveway access to parking areas conflicts with the requirements; or
 3. The utility needs of the Project conflict with the requirement. (Ord. 6856-NS § 11 (part), 2005; Ord. 6830-NS § 2 (part), 2004; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

Chapter 23E.40

C-N NEIGHBORHOOD COMMERCIAL DISTRICT PROVISIONS

Sections:

- 23E.40.010** **Applicability of Regulations**
- 23E.40.020** **Purposes**
- 23E.40.030** **Uses Permitted**
- 23E.40.040** **Reserved**
- 23E.40.050** **Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits**
- 23E.40.060** **Use Limitations***
- 23E.40.070** **Development Standards**
- 23E.40.080** **Parking -- Number of Spaces**
- 23E.40.090** **Findings**

Section 23E.40.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-N Districts. In addition, general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.020 Purposes

The purposes of the Neighborhood Commercial (C-N) Districts are to:

- A. Implement the Master Plan's designations for Neighborhood Commercial areas;
- B. Provide locations for uses supplying convenience goods and services for residents of the immediate area;
- C. Provide locations for other activities compatible with these Commercial Uses;
- D. Minimize traffic and parking problems for the adjacent residential areas; and
- E. Promote compatibility between such commercial areas and nearby residential areas. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.40.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	AUP Prohibited	

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

<i>Table 23E.40.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as 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 property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Non-Chartered Financial Institutions	Prohibited	
Medical Practitioners including Holistic Health and Mental Health Practitioners	AUP	Subject to additional parking requirements under Section 23E.40.080.B
Other Professionals and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

Table 23E.40.030

Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service
Amusement Device Arcades	Prohibited	
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments	UP(PH)	Includes Nightclubs
Food Service Establishments Under 1,000 s.f. Over 1,000 s.f.	ZC AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	ZC*	
Hotels, Tourist	UP(PH)	Includes Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Includes Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service	Prohibited	Includes Parts Service
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores	Prohibited	Includes Sales and/or Service
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Includes Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines	UP(PH)	Exterior and when part of a Retail Financial Service
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Sub-title F
Parking Lots	UP(PH)	

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

<i>Table 23E.40.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section 23E.40.070.D
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	AUP	
Live Entertainment		
Unamplified	ZC	
Amplified	UP(PH)	
Manufacturing Uses	UP(PH)	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agricultures	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
Home Occupations		
Class I	ZC	Subject to the requirements of Chapter 23C.16

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

<i>Table 23E.40.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Class III	UP(PH)	
Class III in the Hillside Overlay	Prohibited	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

<i>Table 23E.40.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

- B. Any Use not listed that is compatible with the purposes of the C-N District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-N District shall be prohibited.
- C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table 23E.40.030. (Ord. 7753-NS § 14, 2021; Ord. 7696-NS § 12, 2020; Ord. 7648-NS § 3, 2019; Ord. 7635-NS § 5, 2019; Ord. 7620-NS § 12, 2018; Ord. 7599-NS § 21, 2018; Ord. 7425-NS § 6, 2015; Ord. 7354-NS § 3, 2014; Ord. 7204-NS § 4, 2011; Ord. 7191-NS § 3, 2011; Ord. 7155-NS § 10, 2010; Ord. 7129-NS § 10, 2010; Ord. 6854-NS § 15, 2005; Ord. 6671-NS § 7, 2001; Ord. 6669-NS §§ 1,2, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.040 Reserved

Section 23E.40.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

- A. Gross floor area shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings, additions to existing buildings or the installation of new floor or Mezzanine levels within or onto existing buildings.
- B. Existing buildings used for commercial activities shall not be converted unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.060 Use Limitations*

- A. No Commercial Use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Use Permit is obtained and is in accordance with Section 23E.16.010.

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

- B. Any Use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.40.030.
1. Any activity or Use which occurs outside of a building shall be subject to the Permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.40.030.
- C. Adult-oriented Businesses and Amusement Device Arcades, are not permitted, as the entire District is within the location limitations of Sections 23E.16.030 and 23E.16.050. Non-Chartered Financial Institutions are not permitted in this District. Alcoholic Beverage Sales or Service Uses and Live/Work Uses shall be subject to the requirements of Section 23E.16.040 and Chapter 23E.20, in addition to the requirements of this District. (Ord. 7425-NS § 7, 2015; Ord. 7191-NS § 4, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.40.070 Development Standards

- A. The Floor Area Ratio (FAR) shall not exceed three.
- B. The height for a Main Building shall not exceed the following limits and shall satisfy the following requirements:

<u>Use type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Commercial only	35	2
Mixed Use	35	3*
Other Uses	35	2
Residential only	35	3

*In Mixed Use buildings, the third floor must be used for residential purposes

- C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:
1. When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.
- D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements; provided, however, that the Board in its discretion may issue a Use Permit to modify the off-street parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.40.090.C.
- E. Exclusive Residential Uses shall be subject to the building site area, height, yard, coverage, Usable Open Space and parking requirements of the R-3 District standards (height for R-3 District is the same as the standards set forth in Section 23E.40.070.B for residential buildings); except that the Board may issue a Use Permit to modify the any R-3 requirement where it finds such modification is necessary to promote any of the general purposes set forth in Section 23E.40.090.C. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.40.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

<i>Table 23E.40.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Hospitals	One per each four beds plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

Chapter 23E.40: C-N Neighborhood Commercial District Provisions

<i>Table 23E.40.080</i>	
Parking Required (Continued)	
<u>Use</u>	<u>Number of spaces</u>
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space and in accordance with the requirements of Section 23E.28.070.
- D. A Transportation Services Fee (TSF) shall be paid per square foot of newly constructed gross floor area in an amount set by City Council Resolution and in accordance with the procedures and purposes of Chapter 23E.28.
- E. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7635-NS § 6, 2019; Ord. 6856-NS § 12 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.40.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
 - 1. Be compatible with the purposes of the District;
 - 2. Be compatible with the surrounding uses and buildings;
 - 3. Not interfere with the continuity of retail and service facilities at the ground level;
 - 4. Not exceed the amount and intensity of Use that can be served by the available traffic capacity and potential parking supply.
- C. In addition to the findings above, the Board shall find, for each Use Permit obtained under Sections 23E.40.070.D and E, that the proposed use or structure satisfies at least one of the following general purposes:
 - 1. To encourage use of the ground floor for commercial purposes where appropriate;
 - 2. To encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building;
 - 3. To facilitate the construction of residential or tourist hotel uses where appropriate;
 - 4. To permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.44: C-E Elmwood Commercial District Provisions

Chapter 23E.44

C-E ELMWOOD COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.44.010	Applicability of Regulations
23E.44.020	Purposes
23E.44.030	Uses Permitted
23E.44.040	Special Provisions -- Numerical Limitations
23E.44.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.44.060	Use Limitations*
23E.44.070	Development Standards
23E.44.080	Parking -- Number of Spaces
23E.44.090	Findings

Section 23E.44.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-E Districts. In addition, general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.44.020 Purposes

The purposes of the Elmwood Commercial (C-E) Districts are to:

- A. Implement the Master Plan's designation for a community commercial district in this area.
- B. To maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
 1. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
 2. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
 3. Limiting the space occupied by businesses that generate high traffic and/or parking demands;
 4. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
 5. Permitting other uses which serve this objective.
- C. To ensure that new buildings, alterations and additions to existing buildings harmonize with their surroundings. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.44: C-E Elmwood Commercial District Provisions

Section 23E.44.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.44.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as 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 property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal/Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage).
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Video Tape/Disk Rental Stores	AUP	

Chapter 23E.44: C-E Elmwood Commercial District Provisions

<i>Table 23E.44.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	Prohibited	Including Holistic Health and Mental Health Practitioners
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service	UP(PH)	Service of alcoholic beverages allowed only as incidental to food service in Food Service Establishments
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Amusement Device Arcades	Prohibited	
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments, including Nightclubs	Prohibited	
Food Service Establishments	AUP	Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	AUP	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	

Chapter 23E.44: C-E Elmwood Commercial District Provisions

<i>Table 23E.44.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	UP(PH)	
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Sub-title F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section 23E.44.070.E
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	Treated as Food Service Establishment and subject to numerical limitations in Table 23E.44.040. Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store.
Live Entertainment Unamplified Amplified	ZC Prohibited	

Chapter 23E.44: C-E Elmwood Commercial District Provisions

<i>Table 23E.44.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Manufacturing Uses	UP(PH)	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements under Section 23E.44.080
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23E.44.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	

Chapter 23E.44: C-E Elmwood Commercial District Provisions

<i>Table 23E.44.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	23C.26

Chapter 23E.44: C-E Elmwood Commercial District Provisions

<i>Table 23E.44.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

- B. Any Use not listed that is compatible with the purposes of the C-E District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-E District shall be prohibited.

- C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table 23E.44.030. (Ord. 7753-NS § 15, 2021; Ord. 7696-NS § 13, 2020; Ord. 7689-NS § 2, 2020; Ord. 7648-NS § 4, 2019; Ord. 7635-NS § 7, 2019; Ord. 7620-NS § 13, 2018; Ord. 7599-NS § 22, 2018; Ord. 7513-NS § 1, 2016; Ord. 7425-NS § 8, 2015; Ord. 7354-NS § 4, 2014; Ord. 7322-NS § 7, 2013; Ord. 7204-NS § 5, 2011; Ord. 7191-NS § 5, 2011; Ord. 7155-NS § 11, 2010; Ord. 7129-NS § 11, 2010; Ord. 6671-NS § 7, 2002; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.44.040 Special Provisions -- Numerical Limitations

- A. Uses subject to numerical limitations as set forth in Table 23E.44.040 shall also be subject to the requirements of Section 23E.44.030. No such limitation may be exceeded unless the Board issues an Administrative Use Permit and makes the findings under Section 23E.44.090.C.

<i>Table 23E.44.040</i>			
Numerical Limitations			
<u>Use</u>	<u>Number Limit</u>	<u>Size (sq. ft.)</u>	<u>Type of Permit</u>
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500	Zoning Certificate
Bookstores, Periodical Stands	No limit	2,000	Zoning Certificate
Food Service Establishments:	25		
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000	Zoning Certificate

(Ord. 7635-NS § 8, 2019; Ord. 7513-NS § 2, 2016; Ord. 7191-NS § 6, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.44.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

- A. No new gross floor area shall be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.

- B. Existing buildings used for commercial activities shall not be converted, unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.44: C-E Elmwood Commercial District Provisions

Section 23E.44.060 Use Limitations*

- A. No Commercial Use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Use Permit is obtained and is in accordance with Section 23E.16.010.
- B. Any Use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading, in Table 23E.44.030, except as below:
 - 1. Any food service use shall be subject to the limitations in Table 23E.44.040 and shall not be considered as an Incidental Use for this District except when an accessory use to a Food Product Store.
- C. Any activity or Use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.44.030.

Chapter 23E.44: C-E Elmwood Commercial District Provisions

Chapter 23E.44: C-E Elmwood Commercial District Provisions

- D. Adult-oriented Businesses, Amusement Device Arcades, and Non-Chartered Financial Institutions are not permitted in this District. Alcoholic Beverage Sales or Service Uses and Live/Work Uses shall be subject to the requirements of Chapters 23E.16 and 23E.20, in addition to the requirements of this District and below:
1. On-premises service or consumption of alcoholic beverages shall be permitted only as incidental consumption with meals in food service establishments. (Ord. 7513-NS § 3, 2016; Ord. 7425-NS § 9, 2015; Ord. 7191-NS § 7, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.44.070 Development Standards

- A. The FAR shall not exceed eight-tenths (.8) for an Interior or Through Lot and the FAR shall not exceed one for a Corner Lot.
- B. The height for a Main Building shall not exceed the following limits and shall satisfy the following requirements:

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
All	28	2*
*Except that basement level devoted exclusively to parking shall not be counted as a story		

- C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:
1. Subject to obtaining a revocable encroachment permit from the City Council, bay windows and balconies 11 feet or more above the sidewalk grade may extend three feet into a street right-of-way, provided, that, not more than 60% of the length of a building elevation shall extend beyond the property line.
- D. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply, for additional yard and building feature requirements, respectively and as below:
1. No food service establishment shall have any openings other than fixed windows and required fire exits within 50 feet of a residential zone. In addition, no food service establishments shall have any live entertainment other than unamplified background music.
- E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements; provided, however, that the Board in its discretion may issue a Use Permit to modify the off-street parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.44.090.B.
- F. Exclusive Residential Uses shall be subject to the building site area, yard, coverage and parking requirements of the R-3 District standards and the height limit set forth in Section 23D.36.070.B. Other requirements are set forth below:
1. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet with no dimension less than six feet;
 2. No Residential Use shall be located on the ground floor within 20 feet of a property line along College or Ashby Avenue. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.44: C-E Elmwood Commercial District Provisions

Section 23E.44.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.
- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. This standard shall not apply to spaces less than 6,000 square feet, where no parking standard exists.
- C. Construction which results in the creation of 6,000 or more square feet of commercial gross floor space shall be required to provide Off-street Parking Spaces at the minimum ratio of two spaces per 1,000 square feet of gross floor area of commercial space and in accordance with the requirements of Chapter 23E.28.
- D. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 6856-NS § 13 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.44.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must do all of the following:
 - 1. Encourage and maintain the present street frontage and pedestrian orientation of the District;
 - 2. Be compatible in design and character with the commercial District and the adjacent residential neighborhoods;
 - 3. Be compatible with the purposes set forth in Section 23E.44.020 and the existing character of the District.

In addition, a finding also shall be made that such action and its effects will not:

- 4. Interfere with the continuity of retail or compatible service facilities at the ground level;
 - 5. Interrupt a continuous wall of building facades;
 - 6. Generate traffic and parking demand beyond the capacity of the commercial District or significantly increase impacts on adjacent residential neighborhoods;
 - 7. Result in domination of this District by one type of use;
 - 8. Generate objectionable odors nor excessive levels of noise.
- C. In order for a Use Permit under Section 23E.44.040.A, for an exception to exceed a numerical limitation for a use, to be granted the following finding must be made: The exception shall result in the positive enhancement of the purposes of the District, as evidenced by neighborhood resident and merchant support and marketing surveys or other information indicating probable substantial patronage by surrounding residents. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

Chapter 23E.48

C-NS NORTH SHATTUCK COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.48.010	Applicability of Regulations
23E.48.020	Purposes
23E.48.030	Uses Permitted
23E.48.040	Reserved
23E.48.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.48.060	Use Limitations*
23E.48.070	Development Standards
23E.48.080	Parking -- Number of Spaces
23E.48.090	Findings

Section 23E.48.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-NS Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.48.020 Purposes

The purposes of the North Shattuck Commercial (C-NS) Districts are to:

- A. Implement the Master Plan's designations for Community Commercial and Commercial/Residential in this area.
- B. To encourage the maintenance and establishment of retail and service activities that provide goods and services to serve the residents of the adjacent and outlying neighborhoods; but do not generate high traffic volume.
- C. To provide locations for other activities compatible with these commercial activities.
- D. To promote compatibility between such commercial areas and adjacent residential neighborhoods.
- E. To limit the space occupied by businesses that generate high traffic volumes.
- F. To support the retention of types of businesses serving adjacent neighborhoods.
- G. To limit space occupied by Commercial Uses, especially offices, that are more appropriately located in the downtown business District.
- H. To prevent development of commercial spaces exceeding the amount and intensity of use that can be served by available traffic capacity and potential parking supply.
- I. To encourage an adequate commercial and residential mix along Shattuck Avenue.
- J. To ensure that new buildings and additions to existing buildings harmonize with their surroundings. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

Section 23E.48.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.48.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as 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 property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

<i>Table 23E.48.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	UP(PH)	Including Holistic Health and Mental Health Practitioners. Subject to parking requirements; see Table 23E.48.080
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service (no Bars, Cocktail Lounges, or Taverns allowed)	UP(PH)	Service of distilled alcoholic beverages may be approved only for Full Service Restaurants
Amusement Device Arcades	Prohibited	
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments Under 1,000 s.f. Over 1,000 s.f.	ZC AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area; not to exceed 2,500 sq. ft.
Gyms and Health Clubs	AUP	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

<i>Table 23E.48.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Theaters, including Motion Pictures and Stage Performance	Prohibited	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Providing service to customers in their cars. See definition in Sub-title F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Sections 23E.48.070.E and 23E.48.080.D
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

<i>Table 23E.48.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Live Entertainment Unamplified Amplified	ZC UP(PH)	
Manufacturing Uses	Prohibited	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	Prohibited	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070.F
Home Occupations Class I Class II Class II in the Hillside Overlay Class III Class III in the Hillside Overlay	ZC AUP Prohibited UP(PH) Prohibited	Subject to the requirements of Chapter 23C.16
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

<i>Table 23E.48.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavations	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10.
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		Subject to the requirements and findings of Section 23C.17.100
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

<i>Table 23E.48.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	* Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

- B. Any use not listed that is compatible with the purposes of the C-NS District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-NS District shall be prohibited.
- C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table 23E.48.030. (Ord. 7753-NS § 16, 2021; Ord. 7696-NS § 14, 2020; Ord. 7689-NS § 3, 2020; Ord. 7648-NS § 5, 2019; Ord. 7635-NS § 9, 2019; Ord. 7620-NS § 14, 2018; Ord. 7599-NS § 23, 2018; Ord. 7521-NS § 12, 2017; Ord. 7470-NS §§ 1, 2, 2016; Ord. 7425-NS § 10, 2015; Ord. 7354 § 5, 2014; Ord. 7322-NS § 8, 2013; Ord. 7204-NS § 6, 2011; Ord. 7191-NS § 8, 2011; Ord. 7155-NS § 12, 2010; Ord. 7129-NS § 12, 2010; Ord. 6854-NS § 16 (part), 2005; Ord. 6671-NS §7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.48.040 Reserved

(Ord. 7470-NS § 3, 2016; Ord. 7191-NS § 9, 2011; Ord. 6854-NS § 17 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.48.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

- A. No more than 2,000 square feet of gross floor area shall be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.
- B. Existing buildings used for commercial activities shall not be converted unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.48.060 Use Limitations*

- A. No commercial use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Use Permit is obtained and is in accordance with Section 23E.16.010.
- B. Any use which is incidental to the primary use of a building or property shall be subject to the Permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.48.030.
- C. Any activity or Use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.48.030.
- D. Adult-oriented Businesses are not permitted, as the entire District is within the location limitations of Section 23E.16.030. Amusement Arcades and Non-Chartered Financial Institutions are not permitted in this District.

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

Alcoholic Beverage Sales/Service and Live/Work uses shall be subject to the requirements of Section 23E.16.040 and Chapter 23E.20, in addition to the following requirements of this District:

1. No on-premise service and consumption of distilled alcoholic beverages shall be allowed except in full service restaurants and subject to obtaining a Use Permit;
2. Food Service Establishments shall have no live entertainment other than unamplified background music, unless a Use Permit is obtained. (Ord. 7425-NS § 11, 2015; Ord. 7191-NS § 10, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.48.070 Development Standards

- A. No lot of less than 4,000 square feet may be created.
- B. The Floor Area Ratio (FAR) shall not exceed one for non-residential uses.
- C. The height for a Main Building shall be subject to the minimum and maximum specifications as follows:

Use Type	Height (max.)	Stories (number)	
		Min.	Max.
All	35 ft.	2*	3*
*Except that basement level devoted exclusively to parking shall not be counted as a story			

- D. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:
 1. When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply, for additional yard and building feature requirements;
 2. Food Service Establishments shall have no openings, other than fixed windows and required fire exits, within 50 feet of a residential zone.
- E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking requirements for the Residential Use portion, and the building separation requirements for all Main Buildings shall be as set forth in the R-3 District requirements. In addition, the following requirements shall apply:
 1. No residential use may be located on the ground floor within 20 feet of a property line adjoining a public right-of-way;
 2. A minimum setback of ten feet shall be required adjoining an interior property line opposite a required window in any habitable room of a residential use;
 3. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet, with no dimension less than six feet.
- F. Exclusive residential uses shall be subject to the building site area, yard, coverage, Usable Open Space and parking requirements of the R-3 District standards. The minimum and maximum height of a building shall be the same as the standard set forth in Section 23E.48.070.C. (Ord. 6854-NS § 18 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

Section 23E.48.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.
- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.48.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

<i>Table 23E.48.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space and in accordance with the requirements of Section 23E.28.070.

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

Chapter 23E.48: C-NS North Shattuck Commercial District Provisions

- D. A Transportation Services Fee (TSF) shall be paid per square foot of newly constructed gross floor area in an amount set by City Council Resolution and in accordance with the procedures and purposes of Chapter 23E.28.
- E. Any Off-street Parking Spaces provided in excess of the number required by this Ordinance may be removed, subject to obtaining a Use Permit.
- F. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7635-NS § 10, 2019; Ord. 6856-NS § 14 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.48.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
 - 1. Be compatible in design and character with the commercial district and the adjacent residential neighborhoods;
 - 2. Be compatible with the purposes and the existing character of the district.

In addition, such action and its effects will not:

- 3. Interfere with the continuity of retail or compatible service facilities at the ground level;
- 4. Exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply. (Ord. 7470-NS § 4, 2016; Ord. 7191-NS § 11, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.52: C-SA South Area Commercial District Provisions

Chapter 23E.52

C-SA SOUTH AREA COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.52.010	Applicability of Regulations
23E.52.020	Purposes
23E.52.030	Uses Permitted
23E.52.040	Reserved
23E.52.050	Construction of New Floor Area -- Requirements for Use Permits
23E.52.060	Use Limitations*
23E.52.070	Development Standards
23E.52.080	Parking -- Number of Spaces
23E.52.090	Findings

Section 23E.52.010 Applicability of Regulations

The regulations in this Chapter shall apply in all C-SA Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.52.020 Purposes

The purposes of the South Area Commercial (C-SA) Districts are to:

- A. Implement the Master Plan's designations for Community Commercial, and the Commercial/Residential areas, as well as the policies of the South Berkeley Area Plan.
- B. Provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area.
- C. Provide an area of neighborhood and lower intensity community Commercial Uses, serving as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue.
- D. Encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley.
- E. Encourage residential development for persons who desire both the convenience of location and more open space than is available in the Downtown.
- F. Provide limited locations for other activities such as offices which may be compatible with both retail and Residential Uses.
- G. Encourage development and amenities that support pedestrian-oriented uses.
- H. Encourage appropriate mixed-use development (retail/office/residential) on appropriate sites in the District.
- I. Increase the opportunities for the establishment of businesses which are owned and operated by local residents. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.52: C-SA South Area Commercial District Provisions

Section 23E.52.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.52.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	AUP	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	ZC*	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC*	Subject to parking requirements; see Table 23E.52.080

Chapter 23E.52: C-SA South Area Commercial District Provisions

<i>Table 23E.52.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Section 23E.16.080
Other Professionals and Government, Institutions, Utilities	ZC*	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service. No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue, except as incidental to seated food service; see Section 23D.52.060 D1.
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Under 1,000 s.f. Over 1,000 s.f.	ZC AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	
Gyms and Health Clubs	ZC*	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile and Motorcycle Repair and Service, including Parts Service	Prohibited	
Automobile and Motorcycle Sales Exclusively indoor operations With outdoor activities	ZC* UP(PH)	Subject to additional requirements, see 23E.52.070.F. Uses with outdoor activities limited to the Dealership Overlay Area by Section 23E.52.060.E.
Automobile and Motorcycle Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	

Chapter 23E.52: C-SA South Area Commercial District Provisions

<i>Table 23E.52.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Which provide service to customers in their cars; see definition in Sub-title 23F
Parking Lots, Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units	UP(PH)	Subject to the standards of Chapter 23E.20
Mixed Use Developments (Residential/Commercial) of less than 5,000 sq. ft. (Residential/Commercial) of 5,000 sq. or more	ZC UP(PH)	Subject to the standards of Section 23E.52.070.D.1 through 6 Subject to the standards of Section 23E.52.070.D.7
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	ZC AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070

Chapter 23E.52: C-SA South Area Commercial District Provisions

<i>Table 23E.52.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E
Home Occupations Class I Class II Class III	ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer people Seven or more people New construction	ZC AUP UP(PH)	Change of use from an existing dwelling unit
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	

Chapter 23E.52: C-SA South Area Commercial District Provisions

<i>Table 23E.52.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	23C.26
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 3,000 sq. ft. shall require an AUP.	

- B. Any use not listed that is compatible with the purposes of the C-SA District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-SA District shall be prohibited.
- C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.52.030. (Ord. 7753-NS § 17, 2021; Ord. 7696-NS § 15, 2020; Ord. 7689-NS § 4, 2020; Ord. 7648-NS § 6, 2019; Ord. 7635-NS § 11, 2019; Ord. 7620-NS § 15, 2018; Ord. 7599-NS § 24, 2018; Ord. 7521-NS § 13, 2017; Ord. 7425-NS § 12, 2015; Ord. 7322-NS § 9, 2013; Ord. 7304-NS § 1, 2013; Ord. 7204-NS § 7, 2011; Ord. 7191-NS § 12, 2011; Ord. 7155-NS § 13, 2010; Ord. 7129-NS § 13, 2010; Ord. 6854-NS § 19 (part), 2005; Ord. 6848-NS § 10 (part), 2005; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.52: C-SA South Area Commercial District Provisions

Section 23E.52.040 Reserved

Section 23E.52.050 Construction of New Floor Area -- Requirements for Use Permits

Gross floor area of three thousand (3,000) square feet or more shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.52.060 Use Limitations*

- A. No commercial use shall operate except between the following hours of the specified days: 7:00 a.m. to 12:00 midnight weekdays (Sunday through Thursday); 7:00 a.m. to 2:00 a.m. weekend days (Friday and Saturday); and in accordance with Section 23E.16.010, provided, however, that the hours may be extended to other times subject to obtaining a Use Permit.
- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.52.030.
- C. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.52.030.
- D. Adult-oriented Businesses are prohibited. Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters 23E.16 and 23E.20 and the following requirement:
 1. The sale and service of distilled alcoholic beverages (hard liquor) is prohibited along Adeline Street, south of Ashby Avenue, except that such service may be allowed subject to obtaining a Use Permit for seated food service and onsite consumption when such service is incidental to meals.
- E. New or relocated automobile or motorcycle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory, shall be limited to the Dealership Overlay Area, which includes all lots with a frontage on Adeline Street, Shattuck Avenue or Ashby Avenue between Dwight Way and the south side of Alcatraz Street, with the exceptions of the Ashby BART Station block and all lots confronting this block and lots with frontage exclusively on Shattuck Avenue south of Ashby Avenue. (Ord. 7635-NS § 12, 2019; Ord. 7425-NS § 13, 2015; Ord. 7304-NS § 2, 2013; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.52.070 Development Standards

- A. The Floor Area Ratio (FAR) shall not exceed four.
- B. The height for a Main Building shall not exceed the following limits, and shall satisfy the following requirements:
 1. For those blocks and portions of blocks of the District adjacent to Shattuck Avenue between Dwight Way on the north and Parker Street on the south:

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Commercial only	36	3
Mixed Use*	60	5*
Other uses	36	3

Chapter 23E.52: C-SA South Area Commercial District Provisions

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Residential only	60	5
*In Mixed Use buildings, the third, fourth and fifth floors shall be used for residential purposes entirely.		

2. For those portions of the District adjacent to Shattuck Avenue between Parker Street on the north and Ward Street on the south, and those properties bounded by Adeline Street, Shattuck Avenue, and Russell Street:

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Commercial only	24	2
Mixed Use*	50	4*
Other uses	24	2
Residential only	50	4
*In Mixed Use buildings, the third and fourth floors shall be used for residential purposes entirely.		

3. For all other properties classified in the District:

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
Commercial only	24	2
Mixed Use*	36	3*
Other uses	24	2
Residential only	36	3
*In Mixed Use buildings, the third floor shall be used for residential purposes entirely.		

- C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:
- When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply for additional yard and building feature requirements.
- D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, including new construction or additions to existing buildings, except in accordance with the following requirements:
- The height shall be limited to the requirements set forth in Section 23E.52.070.B;
 - Yards and building separations shall be the same as set forth in the R-4 District requirements, except that the Rear Yard shall have a minimum depth of 15 feet;
 - Each Dwelling Unit shall have Usable Open Space of at least 40 square feet, with no dimension less than six feet;
 - For the Residential Use portion of a Mixed Use development, the density, coverage, and off-street parking requirements shall be the same as set forth in the R-4 District requirements;
 - The above requirements for a Mixed Use development may be modified in order to encourage mixed residential/retail developments, subject to obtaining a Use Permit;
 - A Mixed Use development which meets all the above requirements, that has all Residential Uses above the ground floor, and is less than 5,000 square feet in gross floor area, including any existing gross floor area which is to be incorporated into the project, shall be allowed subject to a Zoning Certificate;

Chapter 23E.52: C-SA South Area Commercial District Provisions

- 7. A Mixed Use development which either does not meet all the requirements listed in Section 23E.52.070.D.1-4, and/or has a total of 5,000 square feet or more in gross floor area, including any existing floor area which is to be incorporated into the project, may be allowed subject to obtaining a Use Permit by the Board, and any of the findings set forth in Section 23E.52.090.C.

- E. Exclusive Residential Uses shall be subject to the building site area, yard, coverage, Usable Open Space, and parking requirements of the R-4 District standards, and subject to the height limit in Section 23E.52.070.B for residential only buildings; except that the Board may issue a Use Permit to modify any R-4 requirement where it finds such modification is necessary to promote any of the findings set forth in Section 23E.52.090.C.

- F. New or relocated automobile or motorcycle sales uses are subject to the following standards. Expansions or modifications of existing uses are encouraged to meet these standards where feasible and shall not worsen a non-conformity with these standards. These standards may be modified by an AUP subject to Section 23E.52.090.E.
 - 1. Outdoor vehicle display shall only be permitted along Shattuck Avenue and Adeline Street and shall be limited to 30 percent of the lot frontage on those streets;
 - 2. 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;
 - 3. 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;
 - 4. 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;
 - 5. All vehicle repair activities shall be conducted indoors;
 - 6. All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials; outdoor amplification is prohibited;
 - 7. 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; and
 - 8. No vehicles shall be stored in the public right-of-way. (Ord. 7304-NS §§ 3, 4, 2013; Ord. 6854-NS § 20 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.52.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.52.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

<i>Table 23E.52.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Libraries	One per 500 sq. ft. of floor area that is publicly accessible

Chapter 23E.52: C-SA South Area Commercial District Provisions

<i>Table 23E.52.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-4 Standards, Section 23D.40.080
Automobile and Motorcycle Sales	One per 1,000 sq. ft. of floor area

- C. The first 1,000 square feet of new gross floor area may be exempted from providing Off-street Parking Spaces. In addition, parking reductions for Mixed Use projects shall be subject to the provisions of Section 23E.52.080.E.
- D. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- E. The number of Off-street Parking Spaces required for the commercial portion of Mixed Use projects, as defined in Sub-Title 23F, may be modified or waived by the Board, subject to securing a Use Permit, when the proposed Mixed Use project will combine Retail Products Stores and/or Personal Household Services, and Multi-family Residential Uses, to be contained within the same building, or which are to be located on the same lot (or a contiguous lot as part of the same project); and also to the finding required under 23E.52.090.D. The Board may reduce the Off-street parking requirements in any portion of a Mixed Use project in the C-SA District.
- F. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7635-NS § 13, 2019; Ord. 7304-NS § 5, 2013; Ord. 6856-NS § 15 (part), 2005; Ord. 6848-NS § 11 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.52.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
 - 1. Be compatible with the purposes of the District;
 - 2. Be compatible in design and character with the District and the adjacent residential neighborhoods;
 - 3. Not result in the domination of one type of commercial/retail use in any one area of the District.
- C. In addition to the findings above, the Board shall find, for each Use Permit for a mixed use or a residential use obtained under Section 23E.52.070.D or E, that the proposed use or structure satisfies at least one of the following general purposes:
 - 1. To encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building;
 - 2. To permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;
 - 3. To facilitate the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines;
 - 4. To provide consistency with the purposes of the District as listed in Section 23E.52.020.

Chapter 23E.52: C-SA South Area Commercial District Provisions

- D. Any reduction of the off-street parking requirements under Sections 23E.52.080.E or 23E.28.130, is subject to the findings in Section 23E.28.140.
- E. The Zoning Officer may approve a modification of the standards applicable to new or relocated automobile or motorcycle sales uses if it finds that doing so is necessary to facilitate incorporation of an existing structure, to achieve greater consistency with the surrounding street pattern, to buffer impacts to an adjacent residential district, or to accommodate dealership operations. (Ord. 7304-NS § 6, 2013; Ord. 6856-NS § 16 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.56

C-T TELEGRAPH AVENUE COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.56.010	Applicability of Regulations
23E.56.020	Purposes
23E.56.030	Uses Permitted
23E.56.040	Reserved
23E.56.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.56.060	Use Limitations*
23E.56.070	Development Standards*
23E.56.080	Parking -- Number of Spaces
23E.56.090	Findings

Section 23E.56.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-T Districts. In addition, general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.020 Purposes

The purposes of the Telegraph Avenue Commercial (C-T) Districts are to:

- A. Implement the General Plan's designation of Avenue Commercial for this area.
- B. Implement the Southside Plan's designation for the Telegraph Avenue Commercial Subarea.
- C. Regulate development in the Telegraph Area Commercial District in order to satisfy the needs of the population groups using the District, especially the University population and the surrounding resident population.
- D. Encourage the availability of a variety of goods and services which serve residents in the District and the University population but do not generate a high volume of vehicular traffic.
- E. Allow for uses which maintain the cultural quality of the District giving it its regional appeal without generating substantial vehicular traffic.
- F. Discourage uses which, because of size, the type of the products sold, vehicular traffic generated or other considerations, are more appropriately located elsewhere in the City.
- G. Encourage a mix of goods and services which will preclude the dominance of any one type of use and which will produce variations within the same category of uses.
- H. To encourage the establishment and maintenance of uses which will satisfy the needs of all age groups and attract a range of users and interests.
- I. Encourage the creation of additional housing in the District which is affordable, including housing for those who work or study nearby.
- J. Encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the District.

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

- K. Encourage mixed Commercial and Residential Uses.
- L. Encourage the construction of new housing in mixed use development on vacant properties and surface parking lots.
- M. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed use development.
- N. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.
- O. Encourage the establishment and survival of small, locally-owned businesses, thereby contributing to the vitality and diversity of the District.
- P. Discourage the type of Commercial Use whose establishment will contribute to the displacement of businesses that supply neighboring residents with essential goods and services.
- Q. Ensure that new buildings, additions and renovations harmonize with and enhance the unique character of the District.
- R. Provide environmental protection for the residents of mixed residential commercial structures and surrounding residents from such detriments as noise, fumes and litter.
- S. Preserve the ethnic diversity of the resident population and users of the District and of the types of businesses providing ethnically diverse goods and services in the District.
- T. Protect and encourage the development of properties accessible to the disabled for both residential and Commercial Use.
- U. Discourage uses which are widely available in other shopping Districts throughout the Bay Area and detract from the unique type and mix of goods and services available in the District. (Ord. 7210-NS § 19, 2011: Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.030 Uses Permitted

- A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited. See also Section 23E.56.070.C for restrictions on usage of upper floors.

<i>Table 23E.56.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

<i>Table 23E.56.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage).
Laundromats	AUP*	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	AUP*	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070. When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
Medical Practitioners, including Holistic Health and Mental Health Practitioners	AUP*	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C. When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Section 23E.16.080
Other Professionals and Government, Institutions, Utilities	AUP*	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C. When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

<i>Table 23E.56.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	For on-site consumption only. Service of distilled alcoholic beverages may be approved for seated food service.
Amusement Device Arcades	Prohibited	
Commercial Recreation Center Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC AUP* UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Under 1,500 s.f. Over 1,500 s.f.	ZC AUP*	
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Prohibited on ground floor adjacent to street frontage
Gyms and Health Clubs	ZC	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC	Excluding service of auto parts
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Automobile/Motorcycle Parts Service	UP(PH)	
Gasoline/Automobile Fuel Stations	Prohibited	Except when located in a parking structure
Motorcycle Stores	Prohibited	Including Sales and/or Service
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R- District When abutting R- District	AUP* UP(PH)	
Automatic Teller Machines	AUP*	Exterior and when part of a Retail Financial Service

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

<i>Table 23E.56.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Drive-in Uses	Prohibited	Which provide service to customers in their cars. See definition in Sub-title 23F
Parking Lots	Prohibited	
Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP*	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.56.070.E
Uses Incidental to a Permitted Use		
Amusement Devices (up to 3)	AUP*	
Food or Beverage for Immediate Consumption	AUP*	
Live Entertainment Unamplified	AUP* ZC	
Manufacturing Uses	AUP*	
Storage of Goods (over 25% of gross floor area)	AUP*	
Wholesale Activities	AUP*	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
Home Occupations Class I Class II Class III	ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

<i>Table 23E.56.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer people Seven or more persons New Construction	ZC AUP UP(PH)	Change of use from an existing dwelling unit
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Circus or Carnival	UP(PH)	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	Prohibited	
Laboratories	Prohibited	Except photographic processing laboratories
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

<i>Table 23E.56.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate	* For the purposes of the C-T zoning district, uses established by	
AUP – Administrative Use Permit *	AUP require public notification of a decision within a 300-foot	
UP(PH) – Use Permit, public hearing required	radius of the subject property.	
Prohibited – Use not permitted		

B. Any use not listed that is compatible with the purposes of the C-T District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-T District shall be prohibited. (Ord. 7753-NS § 18, 2021; Ord. 7696-NS § 16, 2020; Ord. 7689-NS § 5, 2020; Ord. 7648-NS § 7, 2019; Ord. 7635-NS § 14, 2019; Ord. 7620-NS § 16, 2018; Ord. 7599-NS § 25, 2018; Ord. 7521-NS § 14, 2017; Ord. 7470-NS §§ 5--7, 2016; Ord. 7425-NS § 14, 2015; Ord. 7394-NS § 1, 2015; Ord. 7322-NS § 10, 2013; Ord. 7255-NS § 1, 2012; Ord. 7210-NS § 20, 2011; Ord. 7204-NS § 8, 2011; Ord. 7191-NS § 13, 2011; Ord. 7155-NS § 14, 2010; Ord. 7129-NS § 14, 2010; Ord. 6984-NS § 1 (part), 2007; Ord. 6848-NS § 12 (part), 2005; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1,2, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.040 Reserved

(Ord. 7470-NS § 8, 2016; Ord. 7255-NS § 2, 2012; Ord. 7210-NS § 21, 2011; Ord. 7191-NS § 14, 2011; Ord. 6984-NS § 2 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

A. No gross floor area shall be created unless a Use Permit is obtained, as set forth below. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.

1. If the new floor area being created is less than 1,500 square feet of gross floor area, an Administrative Use Permit may be issued by the Zoning Officer;
2. If the new floor area being created is 1,500 or more of square feet of gross floor area, then a Use Permit shall be obtained.

B. No conversion of space shall be allowed except as set forth below:

1. An Administrative Use Permit is required to convert space within an existing building if the space to be converted or the resulting space contains 5,000 square feet or more of gross floor area.
2. Conversions of space that result in a greater number of individual tenant spaces shall be allowed with the issuance of a Zoning Certificate. An Administrative Use Permit is required to create any tenant space less than 1,000 square feet. (Ord. 6984-NS § 3 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.060 Use Limitations*

A. Notwithstanding the provisions related to extending the hours of operation of an existing commercial use subject to a Use Permit or AUP in Chapter 23B.56, Section 23E.16.040, and/or any Conditions of Approval in a Permit, commercial uses between Bancroft Way and the north side of Dwight Way may operate 24 hours

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

per day, seven days per week; provided, that any use with alcohol sales or service shall conform with subdivision B of this Section.

1. After January 1, 2016, the Planning Commission shall review the allowable operating hours north of Dwight Way.
 2. Commercial uses located between the south side of Dwight Way and Parker Street may operate from 7:00 a.m. to 12:00 a.m. seven days per week, unless later hours are specified by an Administrative Use Permit under Section 23E.56.090.C.
- B. An establishment that sells alcohol for off-site consumption may stay open past midnight if its ABC license does not require sales of alcohol for off-site consumption to cease by midnight; provided that the ZAB approves a Use Permit and makes the findings in Section 23E.56.090.C.
- C. On-premises service and consumption of distilled alcoholic beverages shall be permitted with seated food service only.
- D. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.56.030.
- E. Adult-oriented Businesses and Amusement Arcades are prohibited.
- F. Live/Work Uses are subject to additional requirements under Chapter 23E.20.
- G. Non-Chartered Financial Institutions are subject to additional requirements under Chapter 23E.16.080. (Ord. 7635-NS § 15, 2019; Ord. 7561-NS § 7, 2017; Ord. 7470-NS § 9, 2016; Ord. 7425-NS § 15, 2015; Ord. 7282-NS § 1, 2013; Ord. 6984-NS § 4 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.56.070 Development Standards*

- A. The Floor Area Ratio (FAR) and stories shall not exceed the following limits:
1. The Telegraph/Channing Parking Garage shall not have an FAR.
 2. Properties within the District located south of Dwight Way shall not exceed an FAR of four and one half and a height of 4 stories.
 3. All other properties within the District shall not exceed an FAR of five.
- B. The height for a Main Building shall satisfy the following requirements:
1. The minimum height shall be 35 feet.
 2. The maximum height shall be 65 feet, except properties within the District located south of Dwight shall not exceed 50 feet.
 3. The Zoning Board may approve a Use Permit to increase a project's FAR to 6.0 and maximum height to 75 feet if at least 50% of the total building floor area is for residential use, subject to the finding required under Section 23E.56.090.F; except properties within the District located south of Dwight shall be limited to five stories and 65 feet and no increase in FAR.
 4. The maximum height of the Telegraph/Channing Garage shall be seven stories and 85 feet.

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

- C. In all buildings, except those listed below, 100% of the floor area above the ground floor shall be used for Residential Use, except where the second floor is used for either Commercial Use as an integral part of the ground floor establishment or Offices.
1. Offices may locate on the first or second floor throughout the district, subject to the restrictions and permits listed in Section 23E.56.030.
 2. Buildings located adjacent to Bancroft Way may have offices on upper floors subject to the restrictions and permits listed in Section 23E.56.030.
 3. Buildings not adjacent to Bancroft Way may create office use space above the second floor with a Use Permit. The particular office use is subject to the restrictions and permits listed in Section 23E.56.030.
 4. Second floor commercial space that is an integral part of the ground floor establishment shall have no entrances or exits that offer access independent of the interior of the ground floor space other than required fire exits, and shall not exceed the ground-floor area.
- D. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:
1. Shade studies shall be required for all proposed buildings exceeding three stories or 40 feet. Based on the findings of the shade study, the fourth or higher story of the building may be required to be set back to minimize shade impacts on adjacent properties or the public right-of-way.
 2. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply, for additional yard and building feature requirements.
- E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, including the development standards of Section 23E.56.070, the density limitations of the R-3 District, and as follows:
1. Each Mixed Use building shall contain at least 40 square feet of Usable Open Space per Dwelling Unit for the residential use portion, except that no dimension of such open space shall be less than six feet.
 2. The Board may approve a Use Permit to increase the density of a Group Living Accommodation use if it makes the following findings:
 - a. At least 50% of the total building floor area is designated for residential use;
 - b. The increase in density will not be detrimental to the immediate neighborhood; and
 - c. The project meets the purposes of the District.
- F. Exclusive Residential Uses are not allowed. Dwelling Units and Group Living Accommodations may be allowed, however, above the ground floor only when located in a Mixed Use building.
- G. Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP). (Ord. 7502-NS § 1, 2016; Ord. 7394-NS § 2, 2015; Ord. 7333-NS § 1, 2014; Ord. 7210-NS § 22, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.56.080 Parking -- Number of Spaces

- A. No Off-street Parking Spaces are required. In addition, no off-street loading spaces are required.

Chapter 23E.56: C-T Telegraph Avenue Commercial District Provisions

- B. Occupants of residential units created without parking after the effective date of this subsection shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Chapter 14.72 of the BMC.
- C. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.
- D. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted.
- E. No new off-street parking shall be permitted on any lot abutting Telegraph Avenue exclusively, and shall only be permitted on lots abutting other streets where access to the parking is gained from curb cuts existing on July 6, 1989, and subject to obtaining a Use Permit; and such Use Permit shall be subject to the Board making the finding as provided in Section 23E.56.090.D. (Ord. 7210-NS § 23, 2011: Ord. 6856-NS § 17 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 23E.56.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
 - B. A proposed use or structure must:
 - 1. Be compatible with the purposes of the District;
 - 2. Encourage and maintain the present street frontage of the District, will not interfere with the continuity of retail or compatible service facilities at the ground level and will not interrupt a continuous wall of building facades;
 - 3. Be compatible in design and character with the District and the adjacent residential neighborhoods;
 - 4. Not generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods.
 - C. No Administrative Use Permit or Use Permit may be granted under Section 23E.56.060.A or 23E.56.060.B unless the Zoning Officer or Board finds that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the District.
 - D. No Use Permit shall be granted under Section 23E.56.080.E, unless the Board finds that traffic from the new parking will not significantly impede pedestrian circulation.
 - E. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).
 - F. To approve a Permit for increased height or stories, the Zoning Board must find that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks. (Ord. 7470-NS § 10, 2016: Ord. 7333-NS § 2, 2014: Ord. 7210-NS § 24, 2011: Ord. 6984-NS § 5 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.60

C-SO SOLANO AVENUE COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.60.010	Applicability of Regulations
23E.60.020	Purposes
23E.60.030	Uses Permitted
23E.60.040	Reserved
23E.60.050	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
23E.60.060	Use Limitations*
23E.60.070	Development Standards
23E.60.080	Parking -- Number of Spaces
23E.60.090	Findings

Section 23E.60.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-SO Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.020 Purposes

The purposes of the Solano Avenue Commercial (C-SO) Districts are to:

- A. Implement the Master Plan's designations for Community Commercial and Commercial Service areas.
- B. Maintain a scale and balance of commercial activity on Solano Avenue that will enhance the surrounding neighborhood and serve its residents, and will operate:
 - 1. To encourage the location of businesses on Solano Avenue that serve the everyday needs of local residents;
 - 2. To discourage the location of businesses on Solano Avenue that serve a larger regional clientele, and should more appropriately be located in the Central Business District;
 - 3. To limit the number of businesses on Solano Avenue that generate traffic or parking demand in excess of commercial parking availability, causing the overflow of traffic circulation and parking onto adjacent residential streets;
 - 4. To encourage location of late night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a 11:00 p.m. closing time for businesses on Solano Avenue;
 - 5. To ensure that all construction, alterations, or additions to buildings will be in functional and aesthetic harmony with adjacent buildings and areas.
- C. To protect local residents from commercial noise, offensive odors and parking and traffic problems. (Ord. 7191-NS § 15, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

Section 23E.60.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.60.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as 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 property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	UP(PH)	

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

<i>Table 23E.60.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners, including Holistic Health & Mental Health Practitioners	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Non-Chartered Financial Institutions	Prohibited	
Other Professionals, and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service (no Bars, Cocktail Lounges, & Taverns)	UP(PH)	Service of distilled alcoholic beverages may be approved for Food Service Establishments providing seated food service; see Section 23E.60.060 D1
Amusement Device Arcades	Prohibited	
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Under 1,000 s.f. Over 1,000 s.f.	ZC AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	AUP	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels, subject to parking requirements; see Section 23E.60.080
Motels, Tourist	Prohibited	
Theaters	Prohibited	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

<i>Table 23E.60.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores (sales or service)	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	AUP	Limited to 2 machines and only when off-street parking is provided
Drive-in Uses	UP(PH)	Which provide service to customers in their cars. See definition in Sub-title 23F
Parking Lots 5 or fewer Off-street Parking Spaces More than 5 Off-street Parking Spaces	AUP UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.60.070.E
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	
Live Entertainment Unamplified Amplified	ZC AUP	Also subject to the limitations under Section 23E.60.060.D.2

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

<i>Table 23E.60.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
Home Occupations Class I Class II Class III	ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Change of use from an existing dwelling unit
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

<i>Table 23E.60.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements (if any)
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	Except medical office laboratories
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	23C.26
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

B. Any use not listed that is compatible with the purposes of the C-SO District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-SO District shall be prohibited.

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

- C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.60.030. (Ord. 7753-NS § 19, 2021; Ord. 7696-NS § 17, 2020; Ord. 7689-NS § 6, 2020; Ord. 7648-NS § 8, 2019; Ord. 7635-NS § 16, 2019; Ord. 7620-NS § 17, 2018; Ord. 7599-NS § 26, 2018; Ord. 7470-NS §§ 11, 12, 2016; Ord. 7425-NS § 16, 2015; Ord. 7354-

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

NS § 6, 2014; Ord. 7322-NS § 11, 2013; Ord. 7204-NS § 9, 2011; Ord. 7191-NS § 16, 2011; Ord. 7155-NS § 15, 2010; Ord. 7129-NS § 15, 2010; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.040 Reserved

(Ord. 7470-NS § 13, 2016; Ord. 7423-NS § 1, 2015; Ord. 7191-NS § 17, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.050 Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits

- A. No gross floor area shall be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.
- B. Existing buildings used for commercial activities shall not be converted, unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.060 Use Limitations*

- A. No Commercial use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Variance is obtained and in accordance with Section 23E.16.010.
- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading under Table 23E.60.030.
- C. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading under Table 23E.60.030.
- D. Adult-oriented Businesses are not permitted, as the entire District is within the location limitations of Section 23E.16.030. Amusement Arcades and Non-Chartered Financial Institutions are not permitted in this District. Live/Work Uses shall be subject to the requirements of Chapter 23E.20, in addition to the requirements of this District. Alcoholic Beverage Service uses, except as provided for below, are not permitted:
 - 1. No on-premises service and consumption of distilled alcoholic beverages shall be allowed except with seated food service and subject to obtaining a Use Permit.
 - 2. Food Service Establishments shall have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities. (Ord. 7635-NS § 17, 2019; Ord. 7470-NS § 14, 2016; Ord. 7425-NS § 17, 2015; Ord. 7191-NS § 18, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.60.070 Development Standards

- A. The Floor Area Ratio (FAR) shall not exceed two.
- B. The height and number of stories for a Main Building shall be subject to the following specifications, except that in Mixed Use and exclusively residential buildings, no Residential use shall be located on the ground floor within 320 feet of a street side property line:

<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>
All	28	2

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

- C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required except as set forth below:
1. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply for additional yard and building feature requirements;
 2. Subject to obtaining an encroachment permit from the Public Works Department, bay windows and balconies 11 feet or more above the sidewalk grade may extend three feet into a street right-of-way, provided, that, not more than 60% of the length of a building elevation shall extend beyond the property line.
- D. The following requirements and limitations shall apply to all Commercial Uses on lots adjacent to residential Districts or having frontage on any street other than Solano Avenue:
1. No live entertainment shall be permitted other than unamplified music, poetry reading, comedy or other quiet activities which would not cause noise problems for nearby residents in any food service or entertainment establishment;
 2. No openings other than fixed windows and required fire exits shall be permitted within 50 feet of any property located in an R-District in order to reduce noise and odor problems in residential areas; and customer use of rear or side exits which open onto residential streets (with the exception of emergency access) shall be prohibited;
 3. No garbage or recycled materials shall be deposited or placed for collection on residential streets from storage areas located at the rear of any building. All such materials shall be stored in an enclosed area for health and sanitation reasons;
 4. No deliveries to non-residential establishments from residential streets shall be permitted.
- E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking for the Residential Use portion, and the building separation requirements for all Main Buildings shall be as set forth in the R-3 District requirements. In addition, the following requirements shall apply:
1. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet with no dimension less than six feet.
 2. The Board may issue a Use Permit to modify these requirements for a Mixed Use building subject to the any of the findings under Section 23E.60.090.D.
- F. Exclusive Residential Uses shall be subject to the density, yard, coverage, Usable Open Space and parking requirements of the R-3 District standards (height shall be the same as set forth in Section 23E.60.070.B for all buildings) except that the Board may modify the requirements of the R-3 District for an exclusively Residential Use, subject any of the findings under Section 23E.60.090.D. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.60.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area.

<i>Table 23E.60.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- D. A Transportation Services Fee (TSF) shall be paid per square foot of newly constructed gross floor area in an amount set by City Council Resolution and in accordance with the procedures and purposes of Chapter 23E.28.
- E. Any Off-street Parking Spaces provided in excess of the number required by this Ordinance may be removed, subject to obtaining a Use Permit.
- F. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7635-NS § 18, 2019; Ord. 6856-NS § 18 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.60.090 Findings

- A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
1. Encourage and maintain the character of the street frontage and pedestrian orientation of the District;
 2. Be compatible in design and character with the District and the adjacent residential neighborhood;
 3. Be compatible with the purposes set forth in this set of regulations and the existing character of Solano Avenue;

In addition the proposed use or building will not:

4. Interfere with the continuity of retail or compatible service facilities at the ground level, or interrupt a continuous wall of building facades;
 5. Generate traffic and parking demand to significantly increase impacts on adjacent residential neighborhoods.
- C. The Board may issue a Use Permit to modify the requirements for a Mixed Use or residential building under Section 23E.60.070.E or F, if it makes any of the following findings: That the building will:
1. Encourage public transit utilization and existing off-street parking facilities in the area of the proposed building;

Chapter 23E.60: C-SO Solano Avenue Commercial District Provisions

2. Facilitate the construction of residential or tourist hotel uses where appropriate;
3. To permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose. (Ord. 7470-NS § 15, 2016: Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

Chapter 23E.64

C-W WEST BERKELEY COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.64.010	Applicability of Regulations
23E.64.020	Purposes
23E.64.030	Uses Permitted
23E.64.040	Special Provisions: Designated Nodes*
23E.64.050	Construction of New Floor Area and Conversions of Existing Buildings, Requirements for Use Permits
23E.64.060	Use Limitations*
23E.64.070	Development Standards*
23E.64.080	Off-Street Parking and Loading Requirements
23E.64.090	Findings

Section 23E.64.010 Applicability of Regulations

The regulations in this chapter shall apply in all C-W Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.64.020 Purposes

The purposes of the West Berkeley Commercial (C-W) Districts are to:

- A. Implement the West Berkeley Plan's designation of a Commercial District;
- B. Provide locations for commercial services which primarily serve area residents and/or businesses;
- C. Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
- D. Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
- E. To provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
- F. Encourage the intensification of commercial activity at designated nodes to help develop more pedestrian-oriented environments at those locations;
- G. Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
- H. Encourage appropriately intense development in underutilized portions of commercial streets;
- I. Promote development compatible with adjacent commercial, residential and industrial areas;
- J. Provide a location for cultural and performing arts activities;
- K. To promote environmental protection for the residents and workers both within and adjacent to the District from such detriments as noise, fumes, and other detrimental environmental effects. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

Section 23E.64.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<i>Table 23E.64.030</i>				
Use and Required Permits				
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Retail Sales				
Retail uses as defined in Sub-title 23F, except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH)*	*Except when part of a combination commercial/residential use; see Mixed Use Development heading
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)			Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)			Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)			
Smoke Shops	UP(PH)			Prohibited if within 1,400 feet of a school or public park
Cannabis Retailer	ZC			ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC			ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>				
Use and Required Permits (Continued)				
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Personal and Household Services				
	Under 3,000	3,000-5,000	5,000 or more	
All Personal/Household Services, except as specified below	ZC	AUP	UP(PH)	As defined in Sub-title 23F, unless otherwise specified
Laundromats and Cleaners	AUP		UP(PH)	Dry Cleaning plants prohibited
Veterinary Clinics	UP(PH)			
Office Uses				
Office uses other than banks prohibited on ground floors in designated nodes.				
	Under 3,000	3,000-5,000	5,000 or more	
All Office Uses, except those specified below	ZC	AUP	UP(PH)	
Business Support Services	ZC	AUP	UP(PH)	See definition in Sub-title F for permitted uses
Financial Services, Retail (Banks)	AUP			
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC	AUP	UP(PH)	Subject to parking requirements under Section 23E.64.080.F
Non-Chartered Financial Institutions	UP(PH)			Subject to additional requirements; see Section 23E.16.080
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses				
Adult-oriented Businesses	UP(PH)			Prohibited on lots with frontage on San Pablo Ave. Other locations subject to distance requirements of Section 23E.16.030
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC			For on-site consumption only
Alcoholic Beverage Service	UP(PH)			Including Bars, Cocktail Lounges and Taverns. Also includes service of distilled spirits incidental to food service
Amusement Device Arcades	UP(PH)			Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center				Outdoor use requires UP(PH)
Under 5,000 s.f.	ZC			
Between 5,000--10,000 s.f.	AUP			
Over 10,000 s.f.	UP(PH)			

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>			
Use and Required Permits (Continued)			
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)		Special Requirements (if any)
Dance, Exercise, Martial Arts and Music Studios	ZC		UP(PH) if 7,500 or more sq. ft.
Entertainment Establishments	UP(PH)		Includes Nightclubs
Food Service Establishments Under 1,500 s.f. Over 1,500 s.f.	ZC AUP		Food service drive-through prohibited on San Pablo. See Section 23E.64.040.C and E. Also see Section 23E.64.090.H for special findings.
Group Class Instruction for Business, Vocational, or Other Purposes	ZC		
Gyms and Health Clubs	ZC		UP(PH) if 7,500 or more sq. ft.
Hotels, Tourist, including Inns, Bed and Breakfasts, and Hostels	UP(PH)		Subject to parking requirements; see Section 23E.64.080.F
Motels, Tourist	UP(PH)		Subject to parking requirements; see Section 23E.64.080.F
Theaters, including Motion Pictures and Stage Performance	UP(PH)		
Automobile and Other Vehicle Oriented Uses			
On lots with frontage on San Pablo Avenue, changes of use from uses other than Automobile and Other Vehicle Oriented Uses prohibited, as provided in Section 23E.64.060.E. Auto parts sales is a retail use.			
	Less than 5,000 sq. ft. floor area and less than 10,000 sq. ft. of lot area	Either 5,000 or more sq. ft. of floor area; or 10,000 or more sq. ft. of lot area	
Automobile and Truck Rentals	AUP	UP(PH)	Prohibited in designated nodes
Automobile Repair and Service, including Parts Service	AUP	UP(PH)	
Automobile Restoration, Antique and Classic Cars	AUP	UP(PH)	
Automobile Sales	AUP	UP(PH)	
Automobile Used Car Establishments	UP(PH)		Prohibited in designated nodes unless principally in buildings
Automobile Washes, Mechanical or Self-Service	UP(PH)		Prohibited in designated nodes
Automobile Wrecking Establishments	Prohibited		
Gasoline/Automobile Fuel Stations	UP(PH)		

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>			
Use and Required Permits (Continued)			
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)		Special Requirements (if any)
Motorcycle Stores, including Sales, Parts and/or Service	UP(PH)		
Recreational Vehicle and Trailers Sales and Rental, including Boats	AUP	UP(PH)	
Tire Sales/Service Stores	UP(PH)		Prohibited in designated nodes; see Section 23E.64.050.C
Parking, Outdoor and Exterior Service Window Uses			
Activities or Storage outside of a building When not abutting R-District and using 10,000 sq. ft. or less of lot area When abutting R-District or 10,000 sq. ft. of lot area or more	AUP UP(PH)		Activities must be permitted or incidental to permitted use in the District
Automatic Teller Machines	AUP		Exterior and when part of a Retail Financial Service
Drive-in uses	Prohibited		Providing service to customers in their cars
Open Air Markets	UP(PH)		Prohibited in designated nodes. See Section 23E.64.050.C
Parking Lots 10 or fewer spaces 11 or more spaces	AUP UP(PH)		
Recycling Redemption Centers	AUP		
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP		
Combination Commercial/Residential and other Mixed Uses			
The area within a Live/Work Unit, including both residential and non-residential space, shall be not less than 800 sq. ft. A UP(PH) is required in some cases; see Chapter 23E.20.			
Live/Work Units 9 or fewer 10 or more	AUP UP(PH)		If not changed from a dwelling unit And/or if changed from a dwelling unit

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>		
Use and Required Permits (Continued)		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Mixed Use Developments Incorporating residential and retail; where the retail space comprises at least 15% but not more than 33% of the floor area Other Mixed Use Developments incorporating residential use and other permitted uses	AUP if less than 20,000 sq. ft. floor area UP(PH) if 20,000 sq. ft. or more floor area ZC if less than 5,000 sq. ft.	AUP if 5,000-9,000 sq. ft.
Uses Incidental to a Permitted Use		
Amusement Devices (up to 3)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	ZC UP(PH)	See performance standards in Section 23E.64.070.E
Storage of Goods (over 25% of gross floor area)	AUP	
Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Additions, Major Residential	AUP	See definition in Sub-title 23F. Subject to required finding under Section 23E.64.090.G
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to Development Standards under Section 23E.64.070

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>		
Use and Required Permits (Continued)		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Group Living Accommodations	UP(PH)	Subject to Development Standards under Section 23E.64.070
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.070.C
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Miscellaneous Uses		
Automatic Teller Machines	AUP	When not part of a Retail Financial Service
Cafeteria, Employee or Residential	AUP	
Cemeteries and Mausoleums	Prohibited	

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>		
Use and Required Permits (Continued)		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	Prohibited in designated nodes. See Section 23E.64.050.C
Commercial Excavation	Prohibited	Including earth, gravel, minerals or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	UP(PH)	Prohibited on ground floor in designated node
Laboratories, Commercial Physical or Biological	Prohibited	See Section 23E.64.030.C
Laboratories, Testing (including Cannabis Testing)	AUP if less than 10,000 sq. ft. UP(PH) if more than 10,000 sq. ft.	
Mortuaries and Crematories	UP(PH)	
Public Utility Substations, Buildings, Tanks	UP(PH)	Prohibited in designated node. See Section 23E.64.050.C
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	Prohibited on ground floor in designated node. See Section 23E.64.050.C
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.030</i>		
Use and Required Permits (Continued)		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Light Manufacturing and Wholesale Trade Uses		
Manufacturing uses prohibited on ground floors in designated nodes. See Section 23E.64.050.C		
Light Manufacturing and Wholesale Trade Uses (including Cannabis Distributors)		
5,000 or less sq. ft.	AUP	
5,000 sq. ft. or more	UP(PH)	
All Other Manufacturing Uses	UP(PH)	
Warehouses or Storage (including Mini-storage Warehouses)	Prohibited	
Legend:		
ZC – Zoning Certificate	UP(PH) – Use Permit, public hearing required	
AUP – Administrative Use Permit	Prohibited – Use not permitted	

- B. Pursuant to the amendment to the West Berkeley Plan concerning 2929 Seventh Street, also known as the Langendorf Building, Commercial Physical and Biological Laboratories shall be permitted on that property, with a Use Permit; provided, that the total floor area, both in this District and in the MU-LI District, on the property occupied by uses permitted in this District shall not be less than 6,000 square feet.
- C. Any use not listed that is compatible with the purposes of the C-W District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-W District shall be prohibited. (Ord. 7753-NS § 20, 2021; Ord. 7696-NS § 18, 2020; Ord. 7689-NS § 7, 2020; Ord. 7648-NS § 9, 2019; Ord. 7635-NS § 19, 2019; Ord. 7625-NS § 5, 2018; Ord. 7620-NS § 18, 2018; Ord. 7599-NS § 27, 2018; Ord. 7521-NS § 15, 2017; Ord. 7425-NS § 18, 2015; Ord. 7322-NS § 12, 2013; Ord. 7204-NS § 10, 2011; Ord. 7191-NS § 19, 2011; Ord. 7155-NS § 16, 2010; Ord. 7129-NS § 16, 2010; Ord. 6909-NS § 9 (part), 2006; Ord. 6848-NS § 13 (part), 2005; Ord. 6675-NS § 1, 2002; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 3, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.64.040 Special Provisions: Designated Nodes*

- A. In addition to the other requirements of the District, the additional purposes and requirements for designated nodes as set forth below shall apply to the locations designated in Paragraph C.
- B. The purposes of the designated nodes are to:
1. Intensify retail, commercial and mixed use activity around major intersections;
 2. Reflect and reinforce the major existing and developing concentrations of pedestrian-oriented uses;
 3. Encourage intensified development around transit transfer points;

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

4. Help define the urban form of San Pablo Avenue by developing identifiable areas of concentrated development.
- C. The following locations, insofar as they are located within the C-W District, are designated as nodes subject to the requirements of Paragraphs D and E:
1. Gilman and San Pablo, including all lots with frontage on San Pablo Avenue between Harrison and Camelia Streets and all lots with frontage on Gilman Street between the eastern border of C-W District and 10th Street;
 2. Cedar and San Pablo, including all lots with frontage on San Pablo Avenue between Virginia and Jones Streets;
 3. University and San Pablo, including all lots with frontage on San Pablo Avenue between Hearst Street and (on the east side of San Pablo Avenue) Cowper Street (and the continued centerline of Cowper Street on the west side of San Pablo Avenue). Also including all lots on University Avenue between 9th Street and the eastern edge of the C-W District;
 4. Dwight and San Pablo, including all lots with frontage on San Pablo Avenue between the point 100 feet north of Dwight Way and Parker Street and all lots with frontage on Dwight Way between the eastern edge of the C-W District and the point 135 feet west of San Pablo Avenue;
 5. Ashby and San Pablo, including all lots with frontage on San Pablo Avenue between Burnett Street (or the continued line of Burnett Street on the west side of San Pablo Avenue) and the City limit;
 6. 4th Street and University, including all lots in the area of the C-W District bounded by 3rd Street on the west, 5th Street on the east, the northern border of the C-W District to the north and Addison Street to the south.
- D. All newly constructed main structures in designated nodes shall be at least two stories or 25 feet in height, except gasoline stations.
- E. The ground floor of buildings in designated nodes shall only be used for retail sales, personal/household services, banks, food and alcohol service, lodging, entertainment and assembly uses, gasoline/automobile fuel stations, enclosed auto repair uses, new car dealers, enclosed used car dealers and required access to and lobbies serving upper-story uses. No food service drive-through is permitted on San Pablo.
- F. To issue a Use Permit for any structure or use at a designated node, the Zoning Officer or the Board must make the finding required in Section 23E.64.090.C. (Ord. 7191-NS § 20, 2011; Ord. 6675-NS § 2, 2002; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.64.050 Construction of New Floor Area and Conversions of Existing Buildings, Requirements for Use Permits

- A. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor or mezzanine levels within or onto existing buildings.
- B. Construction of new floor area shall be subject to the following:
 1. Except as provided in Sections 2 and 3, gross floor area of 5,000 square feet or more shall not be created unless a Use Permit is obtained from the Board;

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

2. Gross floor area of up to 7,500 square feet may be created with an Administrative Use Permit provided that the building is exclusively used for retail uses;
 3. Gross floor area of up to 20,000 square feet may be created with an Administrative Use Permit provided that the building contains residential space and retail space which equals not less than 15% and not more than 33% of the gross floor area being created.
- C. Within the commercial nodes designated in Section 23E.64.040.C, an Administrative Use Permit shall be required for conversions of 5,000 square feet or more. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.64.060 Use Limitations*

- A. No commercial use shall operate except between the hours of 7:00 a.m. and 11:00 p.m. unless a Use Permit is obtained; provided, however, if the use is located within a designated node, the use may operate between 6:00 a.m. and 7:00 a.m. and/or 11:00 p.m. and 12:00 midnight with a Zoning Certificate.
- B. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading under Table 23E.64.030.
- C. For purposes of the Noise Ordinance, Chapter 13.40, the C-W District shall be considered a Commercial District.
- D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters 23E.16 and 23E.20, in addition to the requirements of this District.
- E. For changes of use on San Pablo Avenue:
 1. On lots with frontage on San Pablo Avenue, a use classified in Table 23E.64.030 as an Automobile or Other Vehicle-Oriented Use may only be established on a site which was legally used or approved for use as an Automobile or Other Vehicle Oriented Use as of March 1, 1997 (such sites are hereinafter designated as automotive sites).
 2. On an automotive site, if the automotive use is discontinued for a period of two years or more, it may not be re-established. (Ord. 7425-NS § 19, 2015; Ord. 7191-NS § 21, 2011; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.64.070 Development Standards*

- A. The Floor Area Ratio (FAR) shall not exceed three.
- B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:

<i>Table 23E.64.070</i>			
Building Height Limitations *			
<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>	<u>Special Requirements/Limitations</u>
Commercial Only**	40	3	
Live/Work Only	40	3	
Mixed Use	50	4	The 4th floor must be used for residential or live/work purposes

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

<i>Table 23E.64.070</i>			
Building Height Limitations * (Continued)			
<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>	<u>Special Requirements/Limitations</u>
Residential Only	40	3	
*Within designated nodes there is a minimum height requirement, see Section 23E.64.040.D			
**On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 AND 054-1763-003-03 the maximum height may be 50 feet and 4 stories.			

- C. No yards for main buildings, accessory buildings or accessory structures shall be required, except that:
 - 1. When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.
- D. Each lot shall contain the following minimum useable open space areas:
 - 1. Forty square feet of usable open space for each dwelling unit;
 - 2. Forty square feet of usable open space for each Live/Work Unit.
- E. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts. All uses shall be subject to these standards. (Ord. 7638-NS § 4, 2019; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23E.64.080 Off-Street Parking and Loading Requirements

- A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28.
- B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.64.080 shall meet the requirements listed, for newly constructed floor area, except as otherwise modified in this subsection, and Subsections F through H below.

Table 23E.64.080	
Parking Required*	
<u>Use</u>	<u>Number of spaces</u>
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses and Senior Congregate Housing	None required
Dwelling Units	None required
Hospitals	One per each four beds; plus one per each three employees
Hotels	One per each three guest/sleeping rooms or suites; plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

Table 23E.64.080	
Parking Required* (Continued)	
Use	Number of spaces
Live/Work Units	If any non-resident workers and/or clients are permitted in any work area, there shall be one additional parking space for the first 1,000 sq. ft. of work area, one additional parking space for each additional 750 sq. ft. and subject to any additional requirements for parking pursuant to Section 23E.20.040.B
Manufacturing uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room; plus one space for owner or manager**
Wholesale Trade	One per 1,000 sq. ft. of floor area
*See Subsection I for substitutions of up to 10% with bicycle/motorcycle parking	
**Required parking shall be on the same lot as the building it serves	

- C. Unless otherwise specified in Subsections F-H, uses designated in this chapter as Other Industrial Uses; Automobile and Other Vehicle Oriented Uses; Outdoor Uses; Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of parking demand generated by the particular use and comparable with specified standards for other uses.
- D. The number of parking spaces provided for new commercial floor area shall not exceed four spaces per 1,000 square feet of gross floor area of the commercial use, except that up to five spaces per 1,000 square feet of gross floor area of food service uses may be provided.
- E. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section 23E.28.070.
- F. Any automobile parking required by this section may be leased, provided that the requirements of the general regulations concerning leased parking, Section 23E.28.030, are met and provided that the leased parking spaces are within 500 feet of the property where the parking is required; provided that leased parking a greater distance from the property may be approved by Administrative Use Permit and that if the property is located within a designated node, the leased parking spaces are located within the same designated node as the property.
- G. Any mixed use building (residential and commercial) shall satisfy the off-street parking standards and requirements of this District, provided, however, that the Board or the Zoning Officer may issue a Permit to modify the off-street parking and usable open space requirements where it finds such modification promotes any of the general purposes set forth in 23E.64.020. The Permit required shall be an Administrative Use Permit unless a Use Permit from the Board is required to approve the use or structure, in which case a Use Permit shall be required by the Board.
- H. If a public parking facility available for use by all members of the public is within 1,000 feet of a proposed use, the Zoning Officer or Board may approve a Use Permit to allow that use to reduce or eliminate the otherwise required parking.
- I. Subject to the finding in Section 23E.64.090.F, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.

- J. Notwithstanding the requirements of Section 23E.28.080 (the general regulations concerning screening and landscaping of off-street parking), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific Railroad).
- K. No off-street automobile parking may be provided between the front property line and a main structure within a designated node. Outside of a designated node, no off-street automobile parking may be provided between the front property line and a main structure unless an Administrative Use Permit is obtained; unless a Use Permit is required to approve the use or structure, in which case the Use Permit shall be approved by the Board. In order to approve this Permit, the Zoning Officer or Board shall make the finding under Section 23E.64.090.E.
- L. No building or site shall be altered in such a way as to deprive any leasable space which is used or designated to be used by any manufacturing or wholesale trade use of all loading spaces which meet the general regulations concerning Loading Spaces (Chapter 23E.32).
- M. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7751-NS § 21, 2021; Ord. 7635-NS § 20, 2019; Ord. 6856-NS § 19 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.64.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
 - B. A proposed use or structure must:
 - 1. Be consistent with the purposes of the District;
 - 2. Be compatible with the surrounding uses and buildings;
 - 3. Be consistent with the adopted West Berkeley Plan;
 - 4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;
 - 5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property; and
 - 6. Be capable of meeting any applicable performance standards for off-site impacts;
 - 7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.
 - C. In order to approve a Use Permit for a use and/or structure within a node designated in Section 23E.64.040.C, the Zoning Officer or Board must find the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Zoning Officer or Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.

Chapter 23E.64: C-W West Berkeley Commercial District Provisions

- D. In order to approve a Use Permit for reduction of the otherwise applicable parking requirement on a mixed use property containing residential uses, the Board or the Zoning Officer must find that the reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.
- E. In order to approve a Use Permit to establish parking between the front property line and a main structure, the Zoning Officer or Board must find that one or more of the following circumstances exist:
 - 1. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width;
 - 2. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses;
 - 3. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location;
 - 4. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front property line.
- F. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.64.080.J, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.
- G. To deny a Use Permit for a major residential addition, the Zoning Officer or Board must find that although the proposed major residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.
- H. Before approving an Administrative Use Permit for Food Service Establishments on a lot with frontage on San Pablo Avenue, the Zoning Officer shall make the findings contained in Section 23B.28.050 as well as the findings that:
 - 1. The project does not conflict with the goals and policies of the C-W District; and
 - 2. The location, size, appearance and signage of the proposed use will not adversely affect the San Pablo Avenue Corridor; and
 - 3. The project supports pedestrian-oriented development; and
 - 4. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of Food Service Establishment development, including, but not limited to: increased traffic, litter, and noise.
 - 5. For projects which include construction of new buildings, the Zoning Officer shall also make the findings that the project design:
 - a. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets; and
 - b. Provides pedestrian scale and siting; and
 - c. Incorporates continuity in street facades. (Ord. 7635-NS § 21, 2019; Ord. 6675-NS § 3, 2002; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

Chapter 23E.68

C-DMU DOWNTOWN MIXED USE DISTRICT PROVISIONS

Sections:

- 23E.68.010** **Applicability of Regulations**
- 23E.68.020** **Purpose**
- 23E.68.030** **Uses Permitted**
- 23E.68.040** **Downtown Arts District Overlay**
- 23E.68.050** **Construction of New Floor Area: Use Permits**
- 23E.68.060** **Use Limitations**
- 23E.68.065** **Performance Standards**
- 23E.68.070** **Development Standards**
- 23E.68.075** **Fee to Implement Streets and Open Space Improvement Plan (SOSIP)**
- 23E.68.080** **Parking -- Number of Spaces**
- 23E.68.085** **Green Building Provisions**
- 23E.68.090** **Findings**

Section 23E.68.010 Applicability of Regulations

The regulations in this chapter apply in the Downtown Mixed Use District. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.020 Purpose

The purpose of this Chapter is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development. (Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.030 Uses Permitted

A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040.

<i>Table 23E.68.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

<i>Table 23E.68.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Delivery-Only Retailer	ZC	ZC shall only be considered after business is approved through a selection process approved by the City Council per BMC Section 12.22.020. Subject to restrictions on the ground floor; see Section 23C.25.010.
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section 23E.68.040
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents Within the A.D.O.	ZC AUP	Subject to additional requirements; see Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040
Medical Practitioners Within the A.D.O.	ZC AUP	Including Holistic Health and Mental Health Practitioners Within the Arts District Overlay, see Section 23E.68.040
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities Within the A.D.O.	ZC AUP	Subject to additional requirements; see Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-Oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030 Prohibited on Public Serving Frontages
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service.

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

<i>Table 23E.68.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments: Under 3,000 s.f. Over 3,000 s.f. Within the A.D.O.	ZC AUP AUP	Within the Arts District Overlay, see Section 23E.68.040 See Alcoholic Beverage Service above.
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Subject to additional requirements; see Section 23E.68.060.E
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC	Subject to additional requirements; see Section 23E.68.060.E
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	UP(PH)	
Theaters, including Motion Pictures and Stage Performance	AUP	
Automobile and Other Vehicle-Oriented Uses		
Automobile Parts Stores	Prohibited	
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals, and motorcycle stores	UP(PH)	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building: When not abutting R-District When abutting R-District	AUP UP(PH)	
Drive-in uses	Prohibited	

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

<i>Table 23E.68.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements
Surface Parking Lots: Eight (8) or fewer Off-street Parking Spaces More than eight (8) Off-street Parking Spaces	AUP Prohibited	
Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating When seating not abutting R-District When seating abutting R-District	ZC AUP	
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F Subject to Section 23E.68.070
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	ZC AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	As per R-5 District	See Table 23D.44.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	AUP	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

<i>Table 23E.68.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements
Community Centers	UP(PH)	
Dwelling Units, including multifamily developments	UP(PH)	Subject to the standards under Section 23E.68.060.F
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.68.060.F
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
Hospitals	UP(PH)	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to Section 23E.68.060.F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use of an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	Subject to Section 23E.68.070
Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service		
Exterior	UP(PH)	
Interior	AUP	
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10.
Up to 60 beds	ZC	
More than 60 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

<i>Table 23E.68.030</i>		
Use and Required Permits (Continued)		
Use	Classification	Special Requirements
Radio, Television or Audio/Sound Recording Studios Broadcast Studios	AUP UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	23C.26
Legend:		
ZC -- Zoning Certificate		
AUP -- Administrative Use Permit		
UP(PH) -- Use Permit, public hearing required		

B. The Zoning Officer may approve an Administrative Use Permit for any use that they determine is compatible with the purposes of the C-DMU District. Any use that is not listed that is not compatible with the purposes of the C-DMU District shall be prohibited. (Ord. 7753-NS § 21, 2021; Ord. 7696-NS § 19, 2020; Ord. 7689-NS § 8, 2020; Ord. 7648-NS § 10, 2019; Ord. 7635-NS § 22, 2019; Ord. 7625-NS § 6, 2018; Ord. 7620-NS § 19, 2018; Ord. 7599-NS § 28, 2018; Ord. 7521-NS § 16, 2017; Ord. 7467-NS § 1, 2016; Ord. 7444-NS § 1, 2015; Ord. 7425-NS § 20, 2015; Ord. 7322-NS § 13, 2013; Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.040 Downtown Arts District Overlay

A. The City Council finds and declares that:

1. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley's regional leadership in the arts, and encourage broader economic revitalization of the area.
2. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City's plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, seated food service, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area's economic vitality.

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

- B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:
1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and
 2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.
 3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.
- C. No Food Service Establishment exclusively providing food for offsite consumption or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C. (Ord. 7635-NS § 23, 2019; Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.050 Construction of New Floor Area: Use Permits

Gross floor area of 10,000 square feet or more shall not be created unless a Use Permit is obtained subject to the findings in Section 23E.68.090.D. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor area or mezzanine levels within or onto existing buildings. (Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.060 Use Limitations

- A. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00 a.m. except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.
- B. Any use that is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.68.030.
- C. Any activity or use that occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading in Table 23E.68.030.
- D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.
- E. For new uses identified in Table 23E.68.030 that are located on the ground floor adjacent to a street frontage, storefront windows are required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
- F. In new buildings constructed on Public Serving Frontages, as illustrated in Sub-title 23F and the Downtown Area Plan, entrances to individual dwelling units and to living quarters in Group Living Accommodations are prohibited on the street-facing side of the street-level floor.
- G. Non-Chartered Financial Institutions are not permitted in this District. (Ord. 7425-NS § 21, 2015; Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.065 Performance Standards

Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program adopted concurrently with this Chapter. (Ord. 7229-NS § 1 (part), 2012)

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

Section 23E.68.070 Development Standards

A. The height for main buildings shall not exceed the following limits and shall satisfy the following requirements:

Table 23E.68.070 Height Limits (as per Downtown Area Plan) *			
C-DMU Sub-Area **	Minimum ***	Maximum	Maximum With Use Permit
Core Area†	50 feet	60 feet	75 feet
Outer Core†	40 feet		
Corridor	40 feet		
Buffer	None	50 feet	60 feet

* Notwithstanding Sub-title 23F, in the case of a roof with parapet walls, building height shall be measured to the top of the roof and parapets may exceed the height limits above by up to five (5) feet as of right.

** See Downtown Area Plan Sub-area map in Figure LU-1 and the Zoning Map.

*** New buildings only, measured to the top of the plate. Theater and Museum Buildings are exempt.

† Within the Core, up to three buildings over 120 feet but not more than 180 feet. Within the Core and Outer Core, up to two buildings over 75 feet but not more than 120 feet. See section 23E.68.070.B.

B. The Board may issue Use Permits for up to five buildings that exceed the limits set forth in Table 23E.68.070 if it makes the finding in Section 23E.68.090.E, and as follows:

1. In the combined Core and Outer Core areas, up to two buildings of over 75 feet but not more than 120 feet.
2. In the Core area, up to three buildings over 120 feet but not more than 180 feet. Allowed uses in such buildings include:
 - a. Two residential buildings with ground-level commercial uses.
 - b. One hotel building with conference facilities and accessory commercial uses.
3. Application process for buildings over 75 feet in height:
 - a. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six month intervals until the first application has been submitted. Once the first application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.
 - b. A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and commencement of construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.
 - c. Failure of a permittee to strictly comply with the schedule established by the Use Permit shall be grounds for revocation of the Use Permit pursuant to Chapter 23B.60.

C. No yards for main buildings, accessory buildings, or accessory structures shall be required, except as required in Section 23E.04.050 for commercial lots abutting or confronting residential zoning. In addition

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

buildings shall be set back from property lines as set forth in the table and provisions below, unless modified by a Use Permit subject to the findings in Section 23E.68.090.F.

Portion of Building at Height of:	Front Lot Line	Interior Side Lot Line		Rear Lot Line
		65' and less from lot frontage	Over 65' from lot frontage	
Zero to 20 feet	0' minimum, 5' maximum;	0' minimum	0' minimum	0' minimum
21 feet to 75 feet	0' minimum	0' minimum	5' minimum	5' minimum
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' minimum
Over 120 feet	15' minimum	15' minimum	15' minimum	15' minimum

1. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
2. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
3. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
4. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
5. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.

D. New buildings shall provide on-site open space as follows:

1. For residential uses, 80 square feet of usable open space per unit.
 - a. Each square foot of such open space that is provided as Privately-Owned Public Open Space shall be counted as two square feet of required on-site open space for residential uses.
2. For non-residential uses, one (1) square foot of privately-owned public open space per 50 square feet of commercial floor area.
3. In lieu of providing the open space required by this Section on site, an applicant may pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP) and/or construct public improvement consistent with the SOSIP, as specified in the Use Permit, provided the Board makes the findings in Section 23E.68.090.G. (Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)

In addition to any other requirement of this Chapter, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as may be adopted by the City. (Ord. 7229-NS § 1 (part), 2012)

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

Section 23E.68.080 Parking -- Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area.
- B. The District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.

Use	Number of Parking Spaces Required
Dwelling Units	None required
Hotels and Motels, Tourist (Including Inns, Bed and Breakfast and Hostels)	One per each three guest/sleeping rooms or suites
Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes	None required

1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.
 2. Parking spaces shall be provided on site, or off site within 800 feet subject to securing an AUP and in compliance with Section 23E.28.030.
- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- D. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section 23E.68.090.H or modified with an AUP subject to the findings in 23E.28.140.
- E. New construction that results in an on-site total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including, but not limited to, real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.
- F. Occupants of residential units or GLA units constructed, newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.
- G. For any new building with residential units or structures converted to a residential use, parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.
- H. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.
1. A pass for unlimited local bus transit service; or
 2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

- I. For residential projects that provide vehicle parking, vehicle sharing spaces shall be provided in the amounts specified in the following table.

Number of Parking Spaces Required	Minimum Number of Vehicle Sharing Spaces
0 – 10	0
11 – 30	1
30 – 60	2
61 or more	3, plus one for every additional 60 spaces

1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
 2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make a space available within 90 days.
- J. For residential structures constructed or converted from a non-residential use subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable requirements of 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.
- K. Any construction which results in the creation of more than 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7751-NS § 23, 2021; Ord. 7475-NS § 2, 2016; Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.085 Green Building Provisions

- A. Construction of new buildings and additions of more than 20,000 square feet shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.
- B. Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction. (Ord. 7229-NS § 1 (part), 2012)

Section 23E.68.090 Findings

- A. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board must make the findings required by Section 23B.32.040, as well as the findings required by the following paragraphs of this Section to the extent applicable.
- B. A proposed use or structure must:
 1. Be compatible with the purposes of the District; and
 2. Be compatible with the surrounding uses and buildings.

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

- C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new Food Service Establishment exclusively providing food for offsite consumption or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:
1. The project meets the purposes of the Arts Overlay District as set forth in Section 23E.68.040; and
 2. The location, size, type, appearance, and signage of the proposed use will:
 - a. Animate and enhance the pedestrian experience on the street; and
 - b. Be generally open to the public evenings and on weekends, whenever practicable.
- D. In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that:
1. The addition or new building is compatible with the visual character and form of the District; and
 2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.
- E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.
- F. In order to approve a Use Permit for modification of the setback requirements of 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- G. In-Lieu Open Space.
1. In order to approve a Use Permit under Section 23E.68.070.D for payment of an in-lieu fee, the Board must find that the in-lieu payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
 2. In order to approve a Use Permit under Section 23E.68.070.D for construction of public improvements consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP), the Board must find that the public improvements:
 - a. Will be located within the vicinity of the project and are consistent with the SOSIP; and
 - b. The improvements will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
 - c. The improvements will be completed prior to issuance of a certificate of occupancy for the project, unless otherwise allowed by the Conditions of Approval.
- H. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.D, which may be reduced to zero, the Board must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

Chapter 23E.68: C-DMU Downtown Mixed Use District Provisions

- I. In order to approve a Use Permit to allow parking spaces to be leased or sold in combination with the proposed affordable housing units under Section 23E.68.080.G, the Board must find that applicant has demonstrated that the combined parking is necessary for the purpose of obtaining financing or meeting other obligations. (Ord. 7635-NS § 24, 2019; Ord. 7229-NS § 1 (part), 2012)

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

Chapter 23E.70

C-AC ADELINE CORRIDOR COMMERCIAL DISTRICT PROVISIONS

Sections:

23E.70.010	Applicability of Regulations
23E.70.020	Purposes
23E.70.030	Uses Permitted
23E.70.040	Special Provisions: Adeline Corridor Specific Plan Subareas
23E.70.045	Special Provisions: Special Provisions: Ground Floor Uses
23E.70.050	Construction of New Floor Area -- Requirements for Use Permits
23E.70.060	Use Limitations
23E.70.070	Development Standards
23E.70.080	Parking -- Number of Spaces
23E.70.085	Design Standards
23E.70.090	Findings

Section 23E.70.010 Applicability of Regulations

The regulations in this Chapter shall apply in all C-AC Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 7744-NS § 1, 2020)

Section 23E.70.020 Purposes

The purposes of the Adeline Corridor Commercial (C-AC) District are to:

A. Implement the General Plan's designation for Adeline Corridor Mixed Use area, as well as the policies of the Adeline Corridor Specific Plan.

B. Preserve the unique character and cultural legacy of the Adeline Corridor, sustaining the community as a place where all people can live, work, play, learn, worship, dine, shop and thrive.

C. Promote equitable access to housing by preserving existing affordable housing, preventing displacement, and producing a substantial number of new affordable housing units.

D. Foster economic opportunity for South Berkeley residents and businesses by facilitating job training and workforce development, active community spaces, and a thriving environment for commerce along the Adeline Street/South Shattuck Corridor.

E. Provide safe, equitable transportation options that meet the mobility needs of all residents, regardless of age, means and abilities, and that further the attainment of greenhouse gas emission reduction goals.

F. Provide safe, sustainable, beautiful, healthy, and inclusive public spaces that encourage social interaction, provide opportunities for recreation and environmental health, and support active community life in South Berkeley.

G. Encourage development and amenities that support pedestrian-oriented uses.

H. Maintain and encourage a wide range of community and commercial services, including basic goods and services. Provide locations for both community-serving and regional-serving: businesses, cultural and religious institutions, and non-profit organizations. (Ord. 7744-NS § 1, 2020)

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

Section 23E.70.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

**Table 23E.70.030
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue Subject to the requirements of Chapter 23E.16.040
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Cannabis Storefront Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Chapter 23C.25 and BMC Chapters 12.21 and 12.22
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	AUP	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	ZC	

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC	Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.
Non-Chartered Financial Institutions	UP(PH)	Prohibited on ground floor in some areas. See Section 23E.70.045. Subject to additional requirements; see Section 23E.16.080
Other Professionals and Government, Institutions, Utilities	ZC	Uses over 2,500 sf or 50' wide limited on ground floor in some areas. See Section 23E.70.045.
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service • Beer and wine incidental to seated food service • Distilled spirits incidental to food service • Alcoholic Beverage Service not incidental to food service	ZC AUP UP	All Alcoholic Beverage Service is for on-site consumption only and subject to additional requirements; see Section 23E.16.040 No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby, except as incidental to seated food service.
Commercial Recreation Center 3,000 s.f. or less Over 3,000 s.f.	AUP UP(PH)	Outdoor use requires UP(PH) Uses which include six or more Amusement Devices (Amusement Device Arcade) are subject to location requirements; see Section 23E.16.050.
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Food Service Establishments		
• South Shattuck and North Adeline subareas 3,000 s.f. or less ZC Over 3,000 s.f.	ZC AUP	
• South Adeline subarea 1,500 s.f. or less Over 1,500 s.f.	ZC AUP	
Group Class Instruction for Business, Vocational or Other Purposes	ZC	
Gyms and Health Clubs	ZC	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC	Excluding service of auto parts
Automobile and Motorcycle Sales	Prohibited	
Automobile and Motorcycle Repair and Service, including Parts Service	Prohibited	
Automobile and Motorcycle Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District	AUP	

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
When abutting R-District	UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Which provide service to customers in their cars; see definition in Sub-title 23F
Parking Lots, Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units	AUP	Subject to the standards of Chapter 23E.20, except that clients, customers and employees are permitted at the site without a Use Permit. Prohibited or limited on ground floor in some areas. See Section 23E.70.045.
Mixed Use Developments	UP(PH)	
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Art/Craft Studio	ZC	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit	ZC	

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Accessory Uses and Structures	Per R-3 District	See Table 23D.40.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to the standards under Section 23E.70.070 Prohibited or limited on ground floor in some areas. See Section 23E.70.045.
Group Living Accommodations subject to R-3 density standards	UP(PH)	Subject to the standards under Section 23E.70.070. Prohibited or limited on ground floor in some areas. See Section 23E.70.045.
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	
Nursing Homes	UP(PH)	Prohibited on ground floor in some areas. See Section 23E.70.045.
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer people Seven or more people New construction	ZC AUP UP(PH)	Change of use from an existing dwelling unit Prohibited on ground floor in some areas. See Section 23E.70.045.
Miscellaneous Uses		
Art/Craft Studio	ZC	Limited on ground floor in some areas. See Section 23E.70.045.
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10.
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.030 (Continued)
Use and Required Permits**

Use	Classification	Special Requirements (if any)
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	Subject to the requirements and findings of Chapter 23C.26
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted		

B. Any use not listed that is compatible with the purposes of the C-AC District shall be permitted subject to securing an Administrative Use Permit. Any use not listed that is not compatible with the purposes of the C-AC District shall be prohibited.

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.70.030. (Ord. 7744-NS § 1, 2020)

Section 23E.70.040 Special Provisions: Adeline Corridor Specific Plan Subareas

The Adeline Corridor Specific Plan identifies four distinct subareas which have different physical characteristics and contexts. Different use limitations and development standards may apply to these subareas. See the Adeline Corridor Specific Plan for more specific information about each subarea.

A. South Shattuck: Parcels that have a frontage abutting Shattuck Avenue.

B. North Adeline:

1. West of Adeline: Parcels located between Derby Street and Ashby Avenue, which do not front Shattuck Avenue

2. East of Adeline: Parcels located entirely between Russell Street and the point 110 feet south of Essex Street.

C. Ashby BART:

1. West of Adeline: Parcels bounded by Ashby, MLK Jr. Way and Adeline

2. East of Adeline: Parcels located entirely between Tremont, Woolsey and Adeline, and at least 110 feet south of Essex.

D. South Adeline: Parcels located south of Woolsey Street. (Ord. 7744-NS § 1, 2020)

Section 23E.70.045 Special Provisions: Ground Floor Uses

A. In addition to other requirements of the District, the first 30 feet of depth of the ground floor, as measured from the frontage which abuts the portions of Adeline Street, Shattuck Avenue, MLK, Jr. Way or Ashby Avenue identified below shall be reserved for either Active Commercial Uses, as defined in Sub-Title 23F.04 or for commercial uses. Ground floor tenant spaces with frontages on streets not identified below can be used for any use permitted in the district.

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

Table 23E.70.045

Ground Floor Uses

Area	Permitted ground floor uses
Shattuck between Dwight and Derby	Commercial uses
Shattuck between Ward and Russell	Active Commercial uses
Adeline between Russell and the City boundary	Active Commercial uses
Ashby east of Adeline	Active Commercial uses
North side of Ashby, west of Adeline	Active Commercial uses

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

C. The following uses are permitted on the ground floor in areas designated Active Commercial subject to a Zoning Certificate:

1. Office uses in tenant space 2,500 sf or less in area and 50 feet or less in width;
2. Residential amenities (2,500 sf or less in area and 50 feet or less in width), associated with a residential use.

D. The following use can be permitted on the ground floor in areas designated Active Commercial subject to an Administrative Use Permit:

1. Office uses over 2,500 square feet in area or 50 feet in width.
2. Art/Craft Studio

E. The following use can be permitted on the ground floor in areas designated commercial subject to an Administrative Use Permit:

1. Residential uses where at least 50% of the units are affordable.

F. The following commercial use is not permitted on the ground floor in areas designated Active Commercial or commercial:

1. Live/Work units. (Ord. 7744-NS § 1, 2020)

Section 23E.70.050 Construction of New Floor Area -- Requirements for Use Permits

A Use Permit shall be obtained for construction of new floor area which results in either:

- A new Main Building;
- A new dwelling unit (except ADUs); or
- A gross floor area addition of 5,000 sf or more. (Ord. 7744-NS § 1, 2020)

Section 23E.70.060 Use Limitations

A. No commercial use shall operate except between the following hours of the specified days: 7:00 a.m. to 12:00 midnight weekdays (Sunday through Thursday); 7:00 a.m. to 2:00 a.m. weekend days (Friday and Saturday); and in accordance with Section 23E.16.010, provided, however, that the hours may be extended to other times subject to obtaining a Use Permit.

B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.70.030.

C. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.70.030. (Ord. 7744-NS § 1, 2020)

Section 23E.70.070 Development Standards

A. All Buildings

1. Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

2. Designated historic resources, potential historic resources, or projects that incorporate either type of historic resource will not be required to provide new parking or open space to convert to a new residential or commercial use.

3. Setbacks: No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

- a. When the subject lot abuts a residentially-zoned lot, the setback shall be 10 feet.
- b. When the subject lot abuts a residentially-zoned lot, any portion of new construction that exceeds 35 feet in height shall be setback 20 feet from the shared lot line.
- c. When the subject lot confronts a residentially-zoned lot, any portion of new construction that exceeds 45 feet in height shall be setback 10 feet from the front property line.
- d. The setback requirements above supersede the requirements in Sections 23E.04.050 and .060.

B. Residential and Mixed Use Buildings. The height, Floor Area Ratio (FAR), density, lot coverage and useable open space are based on the percentage of affordable units and shall not exceed the following requirements in each subarea:

1. South Shattuck Subarea

Minimum On-Site Affordable Housing Requirement*	Max height		Max FAR	Max density (du/acre)**	Max lot coverage		Useable open space (sf/unit)
	Stories	Feet			Interior lot	Corner lot	
0% (Tier 1)	4	45'	2.5	120	60%	70%	40
14% (Tier 2)	6	65'	4.0	210	90%	90%	40
21% (Tier 3)	7	75'	5.0	250	90%	90%	40
25% (Tier 4)	8	85'	5.5	300	90%	95%	40

2. North and South Adeline Subareas

Minimum On-Site Affordable Housing Requirement*	Max height		Max FAR	Max density (du/acre)**	Max lot coverage		Useable open space (sf/unit)
	Stories	Feet			Interior lot	Corner lot	
0% (Tier 1)	3	35'	2.0	100	60%	70%	40
14% (Tier 2)	5	55'	3.5	150	90%	90%	40
21% (Tier 3)	6	65'	4.0	210	90%	90%	40
25% (Tier 4)	7	75'	5.0	250	90%	95%	40

3. Ashby BART Subarea

Minimum On-Site Affordable Housing Requirement	Height		FAR	Density (du/acre)	Lot coverage		Useable open space (sf/unit)
	Stories	Feet			Interior lot	Corner lot	

Any future development in the Ashby BART area would be subject to process outlined in the MOU with BART and AB 2923.

* Percentage of total project units.

**Group Living Accommodations (GLAs) are subject to Tier 1 height, FAR, lot coverage and open space requirements of the subarea in which they are located. GLAs shall be subject to R-3 density standards. Higher density is possible with a State Density Bonus.

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

4. For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).

5. Projects that consist of 100% deed-restricted affordable housing units, which can include up to 20% as affordable to moderate income households (i.e., 80% to 120% of Area Median Income) and the remaining 80% of the units as affordable to lower income households (i.e., lower than 80% median income), can add four stories or 45 feet to the maximum height allowed under Tier 1.

6. Minimum on-site affordable housing requirement applies to all residential and mixed use projects and must be provided as a mix of (50) fifty percent at Low Income and (50) fifty percent Very Low Area Median Income (AMI) levels.

7. An AUP may be granted to reduce useable open space requirements if demonstrated to be necessary to build an all-electric building.

8. Publicly Accessible Open Space: Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.

9. In mixed use buildings in all subareas and tier levels, all floors above the second story shall be used for residential uses.

C. Non-residential Buildings.

1. Non-residential buildings are subject to the Tier 1 height and FAR requirements in the relevant subarea as shown in Section 23E.70.070.B.

2. Non-residential buildings are not subject to lot coverage standards, except to accommodate setbacks required in Section 23E.70.070.A.3.

3. The height and Floor Area Ratio (FAR) shall not exceed the following requirements in each subarea:

Subarea	Max height		Max FAR	Max lot coverage*
	Stories	Feet		
South Shattuck	4	45'	2.5	100%
North and South Adeline	3	45'	2.8	100%
Ashby BART	Any future development in the Ashby BART area would be subject to negotiations with BART.			

*Except when setbacks are required per Section 23E.70.070.A. (Ord. 7744-NS § 1, 2020)

Section 23E.70.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

B. Uses listed in Table 23E.70.080 shall meet the requirements listed for newly constructed floor area.

**Table 23E.70.080
Parking Required**

Use	Number of spaces	
	Minimum	Maximum
Residential	No minimum	1 per unit
Non-Residential New Construction		
• under 10,000 gsf	No minimum	1.5 per 1,000 sf
• 10,000 gsf and greater	1/1,000 sf	1.5 per 1,000 sf

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

**Table 23E.70.080 (Continued)
Parking Required**

Use	Number of spaces	
	Minimum	Maximum
Live/Work Units	No minimum	1.5 per 1,000 sf of work area

C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.

D. Any new construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 7744-NS § 1, 2020)

Section 23E.70.085 Design Standards

A. New buildings and additions shall be reviewed for conformance to the design guidelines described in the Adeline Corridor Specific Plan.

B. Except as set forth below, ground floor frontages of all new buildings are subject to the following design standards:

1. Blank walls along the ground floor shall be less than 30 feet in length along sidewalks, pedestrian paths or open space.

2. Ground floors shall have a minimum floor to floor height of 12 feet.

3. Facades shall provide at least 30% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between the sidewalk areas and building interiors. Dark or mirrored glass will not satisfy this requirement.

4. Window glazing shall provide a high degree of light transmittance and be non-reflective.

C. Ground floor frontages in areas identified as active commercial in Section 23E.70.045 shall meet the requirements of Section 23E.70.085.B except:

1. Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.

2. Facades shall provide at least 75% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior. Dark or mirrored glass will not satisfy this requirement.

D. Ground floor frontage in areas identified as commercial in Section 23E.70.045 shall meet the requirements of Section 23E.70.085.B except:

1. Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.

2. Facades shall provide at least 65% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior of office spaces. Dark or mirrored glass will not satisfy this requirement.

E. Parking provided shall meet the following standards:

1. Parking and loading areas shall be located behind, within or underneath buildings.

2. When the depth of a lot is less than 100 feet, surface parking or above-grade structured parking may be located next to the building, but shall not take up more of the primary frontage than the building.

F. The Design Review Committee or design review staff may grant exceptions to the blank wall and transparency requirements. (Ord. 7744-NS § 1, 2020)

Section 23E.70.090 Findings

A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable and consistent with State and federal law:

B. A proposed use or structure must:

1. Be compatible with the purposes of the District;

2. Be compatible in design and character with the District and the adjacent residential neighborhoods; and

3. Encourage utilization of public transit and off-street parking facilities in the area of the proposed building.

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

C. In addition to the findings above, the Board shall find, for each Use Permit for new residential development, that the proposed use or structure facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines.

D. In order to approve an Administrative Use Permit for an office use over 2,500 sf or over 50 feet wide on the ground floor of an Active Commercial area, the Zoning Officer must find that the use supports the development of a strong retail commercial, pedestrian-oriented environment. Factors the Zoning Officer should consider shall include, but are not limited to, pedestrian activity that is expected to be generated at the site, the placement of store entrances relative to the street and the parking lots, and the size and prominence of display windows and areas facing the sidewalk.

E. In order to approve an AUP under Section 23E.70.070.B.7, the Zoning Officer must find that:

1. No other placement of the features to support construction of an all-electric building, including solar photovoltaic (PV) energy systems and water tanks for heat pump water heating, on the property is possible; and
2. Placement of the features to support construction of an all-electric building elsewhere on the property is not financially feasible.

F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Adeline Corridor Specific Plan's adopted Mitigation Monitoring and Reporting Program (MMRP). (Ord. 7744-NS § 1, 2020)

Chapter 23E.70: C-AC Adeline Corridor Commercial District Provisions

Chapter 23E.72: M Manufacturing District Provisions

Chapter 23E.72

M MANUFACTURING DISTRICT PROVISIONS

Sections:

23E.72.010	Applicability of Regulations
23E.72.020	Purposes
23E.72.030	Uses Permitted
23E.72.040	Repealed by Ord. 7625-NS
23E.72.045	Special Provisions: Manufacturing, Wholesale Trade and Warehouse
23E.72.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits
23E.72.060	Use Limitations
23E.72.070	Development and Performance Standards
23E.72.080	Off-Street Parking and Loading Requirements
23E.72.090	Findings

Section 23E.72.010 Applicability of Regulations

The regulations in this chapter shall apply in all Manufacturing (M) Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.72.020 Purposes

The purposes of the Manufacturing (M) District are to:

- A. Implement the West Berkeley Plan's designation of a Manufacturing District;
- B. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
- C. Consistent with other goals expressed in these purposes, encourage development of a manufacturing district dedicated to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
- D. Encourage the creation and continuation of well-paid (often unionized) industrial jobs for people without advanced degrees;
- E. To the greatest degree possible and consistent with other goals expressed in these purposes, retain the stock of manufacturing and industrial buildings and/or sites, especially large buildings and sites, for manufacturing and industrial uses;
- F. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment;
- G. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers;
- H. Support the development of retail automobile sales uses because they contribute to the economic viability of the area and provide sales tax revenues for the City;
- I. Provide opportunities for vehicle sales uses when it will not unduly interfere with manufacturing uses. (Ord. 7013-NS § 1, 1/15/08; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.72: M Manufacturing District Provisions

Section 23E.72.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP(PH)) or is Prohibited.

<i>Table 23E.72.030</i>				
Use and Required Permits				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Manufacturing and Wholesale Trade				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, herbicides and fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP(PH)	UP(PH)	
Semiconductors	UP(PH)			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.72.045.A
Wholesale Trade Establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted.
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			

Chapter 23E.72: M Manufacturing District Provisions

<i>Table 23E.72.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Cannabis Cultivation	ZC			For Large Cultivators (over 10,000 square feet of canopy) a ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.25 and BMC Chapters 12.21 and 12.22
Automobile and Other Vehicle Oriented Uses				
Alternative Fuel/Charge Stations	AUP	UP(PH)	UP(PH)	
Automobile Parts Stores	Prohibited			Permit for automobile parts sales not required when ancillary to permitted vehicle sales use.
Automobile Rentals	Prohibited			
Automobile Wrecking Establishments	AUP	UP(PH)	UP(PH)	
Automobile washes, mechanical or self-service	Prohibited			
Automobile sales	AUP		UP(PH)	Permit level determined by size of lot, not floor area. Not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008.
Automobile Repair and Service, including Automobile Restoration	UP(PH)			Permit for repair use not required when ancillary to permitted vehicle sales use.
Gasoline/Automobile Fuel Stations	Prohibited			Except Alternative Fuel/Charge Stations
Parking, Outdoor and Exterior Service Window Uses				
Activities or Storage Outside of a building not ancillary to a permitted use	ZC	AUP		Not permitted abutting R- District
Automatic Teller Machines	AUP			
Drive-in uses, which provide service to customers in their cars	Prohibited			
Parking Lots				
Exclusively for uses located in the district	ZC for 10 or fewer spaces AUP 11+			
Not exclusively for uses located in the district	UP(PH)			
Recycling Redemption Centers	AUP	AUP	UP(PH)	
Uses Incidental to a Permitted Use				
Amusement Devices	Prohibited			
Food Service Establishment	AUP	Prohibited		

Chapter 23E.72: M Manufacturing District Provisions

<i>Table 23E.72.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Live Entertainment	Prohibited			
Incidental Retail Sales of goods manufactured on site	Up to 1,500 sq. ft. AUP	Prohibited		See limitations in Section 23E.72.060.B
Retail Sales; Personal/Household Services; Food and Alcohol Service, Lodging, Entertainment and Office Uses				
All Office Uses (other than offices ancillary to a permitted use)	Prohibited			
All Retail Sales Uses (other than Incidental Retail Sales of goods manufactured on site), and Personal and Household Services	Prohibited			
Building Materials and Garden Supplies Retail Sales	Prohibited			
Business Support Services	Prohibited			
Cafeterias for Employees only	ZC	Prohibited		
Entertainment uses, live entertainment, theaters (motion picture and other), dance studios	Prohibited			
Hotels and Motels	Prohibited			
Industrial and Mining Products	AUP	Prohibited		
Restaurants and Other Food and Alcohol Service Uses	Prohibited			
Combination Commercial/Residential Uses				
Live/Work Units	Prohibited			
Residential and Related Uses				
All other uses permitted in residential Districts including dwelling units	Prohibited			
Child Care Centers	Prohibited			
Clubs, Lodges for persons working in the District	UP(PH)			
Public Safety and Emergency Services	UP(PH)			
Public Utility Substations, Buildings and Tanks	UP(PH)			
Religious Assembly Uses	Prohibited			
Schools, Public or Private and other Educational Institutions	Prohibited			
Accessory Buildings and Structures with Urban Agriculture	ZC			Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Miscellaneous Uses				
Cemeteries, Crematories, Mausoleums and Mortuaries	Prohibited			

Chapter 23E.72: M Manufacturing District Provisions

<i>Table 23E.72.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Circus or Carnival	Prohibited			
Kennels or Pet Boarding	Prohibited			
Municipal Animal Shelter	UP(PH)			
Parks and Recreational Uses, Public or Private	Prohibited			
Wireless Telecommunications Facilities when located on site with existing facilities	AUP			Subject to the requirements of Section 23C.17.100
When located on a site without existing facilities	Prohibited			Waiver may be granted if ZAB approves finding of necessity as required by Section 23C.17.100.D
Urban Agriculture				Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC			
High-Impact Urban Agriculture (HIUA)	AUP			
Legend:				
ZC -- Zoning Certificate		UP(PH) -- Use Permit, public hearing required		
AUP -- Administrative Use Permit		Prohibited -- Use not permitted		

- B. Any use which is incidental to the primary use of a building or property shall be subject to the Permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.72.030, provided that for storage, wholesale and specified manufacturing uses are allowed with a Zoning Certificate in this District, no additional Permits are required.
- C. Any use not listed that is compatible with the purposes of the Manufacturing District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the Manufacturing District shall be prohibited. (Ord. 7648-NS § 11, 2019; Ord. 7625-NS § 7, 2018; Ord. 7620-NS § 20, 2018; Ord. 7205-NS §§ 2, 3, 2011; Ord. 7194-NS § 1, 2011; Ord. 7167-NS § 4, 2011; Ord. 7155-NS § 18, 2010; Ord. 7013-NS § 2, 1/15/08; Ord. 6738-NS § 1 (part), 2003; Ord. 6671-NS § 7, 2001; Ord. 6644-NS § 3, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.72.040 Medical Cannabis Cultivation

Repealed by Ord. 7625-NS. (Ord. 7464-NS § 1, 2016; Ord. 7161-NS § 7, 2010)

Section 23E.72.045 Special Provisions: Manufacturing, Wholesale Trade and Warehouse

- A. Notwithstanding Section 23E.72.090.A, the following uses may be established within protected Manufacturing, Wholesale Trade and/or Warehousing Space subject to the permit levels in Section 23E.72.030: Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor uses. The issuance of a Use Permit for Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor uses under this subdivision shall not result in the removal or elimination of any protections for the prior use in Chapter 23E.72. (Ord. 7194-NS § 2, 2011)

Chapter 23E.72: M Manufacturing District Provisions

Section 23E.72.050 Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits

- A. Creation of new floor area includes construction of new buildings or accessory buildings, additions to existing buildings or the installation of new floor or mezzanine levels within or onto existing buildings.
- B. The construction of 20,000 square feet or more of new floor area requires a Use Permit. Construction of more than 20,000 but less than 40,000 square feet requires an Administrative Use Permit, and the construction of 40,000 square feet or more shall require a Use Permit and a Public Hearing.
- C. Use Permits required for conversions of existing space are set forth in Table 23E.72.050. Previously separated spaces combined into a larger space require a Zoning Certificate.

Table 23E.72.050

Conversion (Division of Space) Regulations			
Initial space being divided into:	2 – 5 Spaces	6 – 9 Spaces	10 or More Spaces
	ZC	AUP	UP(PH)

(Ord. 7125-NS § 2, 2009; Ord. 6848-NS § 15 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.72.060 Use Limitations

- A. If a Use Permit is not otherwise required by the provisions of this Chapter, an Administrative Use Permit shall be required for any Manufacturing use which is established within 150 feet of a residential use in an R District or in the MU-R District.
- B. Incidental Retail Sales shall meet the following:
 - 1. Signs for Incidental Retail Sales use shall be of such a size and character as to clearly indicate that the retail use is not the Primary Use of the site;
 - 2. Retail Sales floor area shall not exceed 10% of total Gross Floor Area; and
 - 3. No outdoor sales or food service is allowed.
- C. For purposes of the Noise Ordinance, Chapter 13.40, the M District shall be considered an Industry District.
- D. Automobile sales are not permitted on City-owned land used for a Materials Recovery Enterprise or solid waste transfer station as of January 1, 2008. (Ord. 7167-NS § 5, 2011; Ord. 7013-NS § 3, 1/15/08; Ord. 6478-NS § 4 (part), 1999)

Section 23E.72.070 Development and Performance Standards

- A. Except as otherwise provided in Chapter 23B.36, the floor area ratio (FAR) shall not exceed two.
- B. Except as otherwise provided in Chapter 23B.36, the height for a main building for any permitted use shall not exceed 45 feet.
- C. No lot may have an area of less than 20,000 square feet.
- D. No yards shall be required.

Chapter 23E.72: M Manufacturing District Provisions

- E. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts. All uses shall be subject to these standards.
- F. Sites used for automobile sales are subject to the following development standards:
1. When a project results in construction of a new building with more than 10,000 square feet of new floor area, the following standards shall apply to the new building:
 - a. A minimum building frontage of 40 percent of the project's primary street frontage is required within 25 feet of the public right of way. The primary street frontage is the frontage towards which the primary building entrance is oriented;
 - b. Along Gilman Street a minimum building frontage of 50 percent of the Gilman Street frontage is required within 25 feet of the public right of way;
 - c. The minimum building height shall be 20 feet within 25 feet of the public right of way along the primary street frontage.
 2. Adequate landscaping and/or fencing shall be used to screen views from street level of dealership operations that are not located within a building. Outdoor vehicle storage and display does not need screening. Such screening shall not be required to obscure all visibility of interior activities but shall provide some filtering of outdoor dealership operations.
 3. For the purposes of this Title and design review, areas used for outdoor vehicle storage and display are not considered parking areas.
 4. Appropriate site design measures shall be installed to the maximum extent practicable to ensure clean water standards are met. Permanent stormwater best management practices and on-site storm water treatment shall be used for all runoff generated by new impermeable surfaces. Runoff from automobile washing and maintenance activities shall be properly collected and treated, consistent with the requirements of the Public Works Department and the Toxics Management Division of the Planning Department. When new paving is proposed, pervious paving shall be used where feasible and shall be reviewed and approved by the Public Works Department and Office of Transportation.
 5. All noise-generating activities and equipment, such as vehicle repair, shall be shielded by noise-attenuating construction or equipment. Outdoor amplification is prohibited.
 6. Exterior light standards and fixtures shall not be taller than 20 feet, light cutoffs shall be utilized to control light spillover onto adjacent properties, and low energy light fixtures consistent with Berkeley's goals for energy efficiency shall be utilized.
 7. Vehicle test drives shall not be conducted in adjacent residential Zoning Districts.
- G. Projects that may create environmental impacts as described in the West Berkeley Project Final EIR shall be subject to the adopted Mitigation Monitoring Program. (Ord. 7167-NS §§ 6 – 9, 2011; Ord. 7013-NS § 4, 1/15/08; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.72: M Manufacturing District Provisions

Section 23E.72.080 Off-Street Parking and Loading Requirements

A. For each of the following uses, the minimum number of off-street parking spaces shall be provided and in accordance with Chapter 23E.28 except as set forth in Section 23E.72.080.G. Construction of new floor area and changes of use of existing floor area shall satisfy the parking requirements of this section:

<i>Table 23E.72.080</i>	
Off-Street Parking Requirements*	
<u>Use</u>	<u>Parking Requirement -- Number of Spaces</u>
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; one per 1,500 for spaces of 10,000 sq. ft. or more
All non-residential uses other than those listed above and in Subsection C	Two spaces per 1,000 sq. ft. of floor area
Automobile Sales and ancillary uses	One space for every: 1,000 s.f. of display floor area; 500 s.f. of other floor area. Two per service bay.
*See Subsection G for substitutions of up to 10% with bicycle/motorcycle parking	

- B. The otherwise applicable parking requirement may be reduced if a Use Permit is obtained. The Use Permit shall be valid for a specified duration, not to exceed five years. In order to approve the Use Permit, the Zoning Officer or Board shall make the finding under Section 23E.72.090.C.
- C. Unless otherwise specified in Subsection A above, uses designated in this chapter as Other Industrial Uses, Automobile and Other Vehicle Oriented Uses, Outdoor Uses, Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based on the amount of parking demand generated by the particular use and comparable with specified standards for other uses.
- D. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section 23E.28.070.
- E. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section 23E.28.030 are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.
- F. If a Transportation Services Fee (TSF) for all or part of West Berkeley is adopted by the City Council, said TSF shall be paid per square foot of gross floor area in an amount set by Council Resolution, and in accordance with the general regulations concerning TSF, Section 23E.28.120. The fee per square foot may be set at different levels for different types of uses.
- G. Subject to the finding in Section 23E.72.090.D, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.
- H. Notwithstanding the general regulations for screening and landscaping of parking spaces (Section 23E.28.080), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific railroad tracks).
- I. In buildings with one or more manufacturing, wholesale trade or warehouse use, all uses shall maintain the loading space requirements of Chapter 23E.32.

Chapter 23E.72: M Manufacturing District Provisions

- J. All uses which have one or more loading spaces shall retain at least one such space.
- K. Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall satisfy Chapter 23E.32.
- L. All automobile sales uses shall provide for on-site loading and unloading of deliveries and may not occupy street parking or block public or private streets. On-street unloading may be permitted by an Administrative Use Permit subject to the findings of 23E.72.090.F. (Ord. 7013-NS §§ 5, 6, 7, 1/15/08; Ord. 6856-NS § 21 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.72.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable.
- B. A proposed use or structure must:
 - 1. Be consistent with the purposes of the District;
 - 2. Be consistent with the surrounding uses and buildings;
 - 3. Be consistent with the adopted West Berkeley Plan;
 - 4. Be not likely, under reasonably foreseeable circumstances, either to induce or contribute to a cumulative change of use in buildings from manufacturing, wholesale trade or warehousing uses;
 - 5. Be designed to support the industrial character of the District. Such physical compatibility shall include materials used, facade treatments, landscaping, lighting, type, size and placement of awnings, windows and signs and all other externally visible aspects of the design of the building and site;
 - 6. Be able to meet any applicable performance standards for off-site impacts.
- C. In order to approve a Use Permit for a reduction in the otherwise applicable parking requirement for a manufacturing, wholesale trade, or warehouse use under Section 23E.72.080.B, the Zoning Officer or Board must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.
- D. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.72.080.G, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking space and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces being provided.
- E. In order to approve a Use Permit under Section 23E.72.030 to allow an automobile sales use, the Zoning Officer or Board must find that the following conditions are met:
 - 1. The project will not result in unreasonable impacts on circulation and parking on adjacent streets or in the immediate neighborhood;
 - 2. The project will not result in a substantial adverse impact on existing uses in the immediate vicinity;
 - 3. The project will not generate objectionable odors or excessive levels of noise;
 - 4. Site design reflects the urban form of the surrounding area and new construction, materials and/or building forms reflect the area's industrial character;

Chapter 23E.72: M Manufacturing District Provisions

5. New construction along Gilman Street reflects the importance of a defined street wall along this main entry corridor to the City;
 6. The project will not materially interfere with the activities of the City-owned solid waste center.
- F. In order to approve a Permit under Section 23E.72.080.L to allow on-street unloading of automobiles, parts or other auto accessories, the Zoning Officer or Board must find that:
1. It will not be unreasonably disruptive or detrimental to activities in the vicinity; and
 2. On-site deliveries are not feasible due to specific site or roadway constraints. (Ord. 7013-NS. § 8, 1/15/08; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.76: MM Mixed Manufacturing

Chapter 23E.76

MM MIXED MANUFACTURING DISTRICT PROVISIONS

Sections:

23E.76.010	Applicability of Regulations
23E.76.020	Purposes
23E.76.030	Uses Permitted
23E.76.040	Special Provisions: Manufacturing, Wholesale Trade, Warehousing
23E.76.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits
23E.76.060	Use Limitations
23E.76.070	Development and Performance Standards
23E.76.080	Off-Street Parking and Loading Requirements
23E.76.090	Findings

Section 23E.76.010 Applicability of Regulations

The regulations in this chapter shall apply in all Mixed Manufacturing (MM) Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.020 Purposes

A. The purposes of the Mixed Manufacturing (MM) Districts are to:

1. Implement the West Berkeley Plan's designation of a MM District;
2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well paid (often unionized) jobs for people without advanced degrees;
5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry.
6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.76: MM Mixed Manufacturing

Section 23E.76.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

<i>Table 23E.76.030</i>				
Use and Required Permits				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Manufacturing and Wholesale Trade				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			Changes of Use to Mini Storage Warehouse Prohibited
Pesticides, herbicides and fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP	UP(PH)	
Semiconductors	UP(PH)			
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Wholesale Trade or Warehouse, See Section 23E.76.040.D
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted. Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.76.040.D
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.76.040.D
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research (including Cannabis Testing)	AUP	UP	UP(PH)	

Chapter 23E.76: MM Mixed Manufacturing

Table 23E.76.030				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Research and Development	ZC	AUP		
Change of Use from Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section 23E.80.045.A2.
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			
Automobile and Other Vehicle Oriented Uses				
Automobile dismantling/wrecking	AUP	UP(PH)	UP(PH)	
Automobile Repair and Service	UP(PH)			
Automobile washes, mechanical or self-service	Prohibited			
Automobile, Boat, Motorcycle or other new or used vehicle or vehicle parts sales	Prohibited			
Alternative Fuel/Charge Stations	AUP	UP(PH)	UP(PH)	
Gasoline/Automobile Fuel Stations	Prohibited			Except Alternative Fuel/Charge Stations
Parking, Outdoor and Exterior Service Window Uses				
Activities or Storage Outside of a building not ancillary to a permitted use	ZC	AUP		Not permitted abutting R- District
Automatic Teller Machines	AUP			
Drive-in uses, which provide service to customers in their cars	Prohibited			
Parking Lots				
Exclusively for uses located in the District	ZC for 10 or fewer spaces AUP 11+			
Not exclusively for uses located in the District	UP(PH)			
Recycling Redemption Centers	ZC	AUP	UP(PH)	
Uses Incidental to a Permitted Use				
Amusement Devices	Prohibited			
Food or Beverage for Immediate Consumption	AUP	Prohibited	Prohibited	
Live Entertainment	Prohibited			
Incidental Retail Sales of goods manufactured on site	Up to 1,500 sq. ft.	1,501 – 3,000 sq. ft.	Over 3,000 sq. ft.	See limitations in Section 23E.76.060.B
	AUP	UP	Prohibited	

Chapter 23E.76: MM Mixed Manufacturing

Table 23E.76.030

Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Retail Sales; Personal and Household Services; Food and Alcohol Service, Lodging, Entertainment and Office Uses				
All Retail Uses Sales (other than Incidental Retail Sales of goods manufactured on site), and Personal and Household Services	Prohibited			See limitations in Section 23E.76.060.C
Building Materials and Garden Supplies	Prohibited			
Business Support Services	Prohibited			
Cafeterias for Employees only	AUP	Prohibited		
Entertainment uses, live entertainment, theaters (motion picture and other), dance studios	Prohibited			
Industrial and Mining Products	AUP	Prohibited		
Office Uses				
On the 1st floor	Prohibited			Other than offices ancillary to a permitted use
Above 1st floor, including publishing without printing	ZC*	UP(PH)		* If established above a manufacturing use, and if not changed from a manufacturing, warehousing or wholesale trade use; otherwise an AUP is required
Restaurants and Other Food and Alcohol Service Uses	Prohibited			
Combination Commercial/Residential Uses				
Live/Work Unit	Prohibited			
Residential and Related Uses				
Clubs, Lodges for persons working in the District	UP(PH)			
Public Safety and Emergency Services	UP(PH)			
Public Utility Substations, Buildings and Tanks	UP(PH)			
All other uses permitted in residential districts including dwelling units	Prohibited			
Accessory Buildings and Structures with Urban Agriculture	ZC			Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Miscellaneous Uses				
Cemeteries, Crematories, Mausoleums and Mortuaries	Prohibited			
Circus or Carnival	Prohibited except as a temporary use			
Kennels or Pet Boarding	Prohibited			

Chapter 23E.76: MM Mixed Manufacturing

<i>Table 23E.76.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Municipal Animal Shelter	UP(PH)			
Parks and Recreational Uses, Public or Private	Prohibited			
Wireless Telecommunications Facilities when located on site with existing facilities	AUP			Subject to the requirements of Section 23C.17.100
When located on a site without existing facilities	Prohibited			Waiver may be granted if ZAB approves finding of necessity as required by Section 23C.17.100.D
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP			Subject to 23C.26
Legend:				
ZC -- Zoning Certificate AUP -- Administrative Use Permit		UP(PH) -- Use Permit, public hearing required Prohibited -- Use not permitted		

- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading under Table 23E.76.030, except for storage, wholesale, and specified manufacturing, uses that are allowed with a Zoning Certificate.
- C. Any use not listed that is compatible with the purposes of the MM District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the MM District shall be prohibited. (Ord. 7625-NS § 8, 2018; Ord. 7620-NS § 21, 2018; Ord. 7358-NS § 1, 2014; Ord. 7205-NS §§ 4, 5, 2011; Ord. 7194-NS § 3, 2011; Ord. 7167-NS § 10, 2011; Ord. 7155-NS § 19, 2010; Ord. 6738-NS § 1 (part), 2003; Ord. 6671-NS § 7, 2001; Ord. 6644-NS § 3, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.040 Special Provisions: Manufacturing, Wholesale Trade, Warehousing

- A. No ground-level floor area which was, on or after January 1, 1988, used (or previously used and now vacant) for manufacturing, warehousing or wholesale trade may be removed or changed in use, except pursuant to a Use Permit and a finding under Section 23E.76.090.F.
- B. On any property where at least 25% of the floor area was, as of January 1, 1996, used for manufacturing, warehousing and/or wholesale trade, the total floor area on the property for manufacturing, warehousing or wholesale trade shall not be less than 25%.
- C. Notwithstanding subdivisions (A) and (B) of this Section, space established prior to January 1, 2010, as protected Warehouse and/or Wholesale Trade uses under this subdivision may be changed to Research and Development (R&D) use as set forth below; provided, that issuance of a Permit for R&D uses under this subdivision shall not result in the removal or elimination of any protections for the prior use established through this subdivision and such protections shall remain if the R&D use ceases.
 - 1. Prior to August 1, 2016, no more than a combined total of 270,000 gross square feet of protected Warehouse and Wholesale space may be converted to R&D use within the MM (BMC 23E.76) and MULI

Chapter 23E.76: MM Mixed Manufacturing

(BMC 23E.80) zoning districts. As of August 1, 2016, there shall be no numerical limit on the number of gross square feet of protected Warehouse and Wholesale space that may be converted to R&D use within the MM (BMC 23E.76) and MULI (BMC 23E.80) zoning districts.

2. No more than 150,000 gross square feet of this space may have been occupied on or after August 1, 2011, whether or not the use was legally established.
 3. The Zoning Officer may approve an Administrative Use Permit for a change of use of up to 20,000 gross square feet from protected Warehouse and/or Wholesale Trade to Research and Development (R&D).
 4. The Board may approve a Use Permit for a change of use over 20,000 square feet of protected Warehouse and/or Wholesale Trade use to Research and Development (R&D).
- D. Notwithstanding subdivisions (A) and (B) of this Section, the following uses may be established within protected Manufacturing, Wholesale Trade and/or Warehousing space, subject to the permit levels in Section 23E.76.030: Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor. The issuance of a Use Permit for Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor uses under this subdivision shall not result in the removal or elimination of any protections for the prior use in Section 23E.76.040.
- E. 1. Planning staff will report to the City Council once a cumulative total of 50,000 square feet in the MM and MULI districts of protected Warehousing and/or Wholesale Trade have been converted to Research and Development Use (or at the end of one year, whichever occurs first), with additional reports to be provided in the same increments thereafter. The reports are to include the gross square footage of building space converted and the number and type of jobs expected to be created.
2. No later than April 15, 2016, the City Manager shall provide a cumulative report to the City Council and schedule an action item for the Council’s consideration so that it can provide direction as to what, if any, modifications it wishes to make to this Section. (Ord. 7358-NS § 2, 2014; Ord. 7194-NS § 4, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.050 Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings, Requirements for Use Permits

- A. The construction of 20,000 square feet or more of new or added gross floor area of 20,000 square feet or more shall not be created unless a permit is obtained. Creation of more than 20,000 but less than 40,000 square feet shall require an Administrative Use Permit. Creation of 40,000 square feet or more shall require a Use Permit. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor or mezzanine levels within or onto existing buildings.
- B. Permits required for divisions of existing space are set forth in the following table. If spaces of any size which were previously separated are being combined into a larger space, a Zoning Certificate shall be obtained.

Table 23E.76.050

Conversion (Division of Space) Regulations			
Initial space being divided into:	2 – 5 Spaces	6 – 9 Spaces	10 or More Spaces
	ZC	AUP	UP(PH)

(Ord. 7125-NS § 3, 2009; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.76: MM Mixed Manufacturing

Section 23E.76.060 Use Limitations

- A. If a Permit is not otherwise required by the provisions of this chapter, an Administrative Use Permit shall be required for any manufacturing use which is established within 150 feet of a residential use in an R District or in the MU-R District.
- B. Incidental Retail Sales shall meet the following:
 - 1. Signs for Incidental Retail Sales use shall be of such a size and character as to clearly indicate that the retail use is not the Primary Use of the site;
 - 2. Retail Sales floor area shall not exceed 10% of total Gross Floor Area; and
 - 3. No outdoor sales or food service is allowed.
- C. For purposes of the Noise Ordinance, Chapter 13.40, the MM District shall be considered an Industry District. (Ord. 7167-NS § 11, 2011: Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.070 Development and Performance Standards

- A. Except as otherwise provided in Chapter 23B.36, the floor area ratio (FAR) shall not exceed two.
- B. Except as provided for in Chapter 23B.36, the height for a main building for any permitted use shall not exceed 45 feet.
- C. No lot may have an area of less than 20,000 square feet.
- D. No yards shall be required.
- E. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts. All uses shall be subject to these standards.
- F. Projects that may create environmental impacts as described in the West Berkeley Project Final EIR shall be subject to the adopted Mitigation Monitoring Program. (Ord. 7167-NS § 12, 2011: Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.080 Off-Street Parking and Loading Requirements

- A. Except as modified pursuant to Chapter 23B.48, for each of the following uses, the minimum number of off-street parking spaces shall be provided and in accordance with Chapter 23E.28 except as set forth in Section 23E.76.080.G. Construction of new floor area and changes of use of existing floor area shall satisfy the parking requirements of this section.

<i>Table 23E.76.080</i>	
Off-Street Parking Requirements*	
<u>Use</u>	<u>Parking Requirement--Number of Spaces</u>
All non-residential uses other than those listed below and in Subsection C	Two spaces per 1,000 sq. ft. of floor area
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; One space per 1,500 sq. ft. of floor area for spaces of 10,000 sq. ft. or more
*See Subsection G for substitutions of up to 10% with bicycle/motorcycle parking	

Chapter 23E.76: MM Mixed Manufacturing

- B. The otherwise applicable parking requirement may be reduced if a Use Permit is obtained. The Use Permit shall be valid for a specified duration, not to exceed five years. In order to approve the Use Permit, the Zoning Officer or Board shall make the finding under Section 23E.76.090.D.
- C. Unless otherwise specified in Subsection A above, uses designated in this chapter as Other Industrial Uses, Automobile and Other Vehicle Oriented Uses, Outdoor Uses, Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of parking demand generated by the particular use and comparable with specified standards for other uses.
- D. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section 23E.28.070.
- E. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section 23E.28.030 are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.
- F. If a Transportation Services Fee (TSF) for all or part of West Berkeley is adopted by the City Council, said TSF shall be paid per square foot of gross floor area in an amount set by Council Resolution, and in accordance with the general regulations concerning TSF, Section 23E.28.120. The fee per square foot may be set at different levels for different types of uses.
- G. Subject to the finding in Section 23E.76.090.E, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.
- H. Notwithstanding the general regulations for screening and landscaping of parking spaces (Section 23E.28.080), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific railroad tracks).
- I. In buildings with one or more manufacturing, wholesale trade or warehouse use, all uses shall maintain the loading space requirements of Chapter 23E.32.
- J. All uses which have one or more loading spaces shall retain at least one such space.
- K. Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall satisfy Sections 23E.32.010 and 23E.32.030. (Ord. 6856-NS § 22 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.76.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable.
- B. A proposed use or structure must:
 - 1. Be consistent with the purposes of the District;
 - 2. Be compatible with the surrounding uses and buildings;
 - 3. Be consistent with the adopted West Berkeley Plan;

Chapter 23E.76: MM Mixed Manufacturing

4. Not be likely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses;
 5. Be designed in such a manner to be supportive of the industrial character of the District. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site;
 6. Be able to meet any applicable performance standards for off-site impacts.
- C. In order to approve a Use Permit for a regulated conversion of space under Section 23E.76.050.B, the Zoning Officer or Board must find the conversion is necessary to implement the purposes of the District.
- D. In order to approve a Use Permit for a reduction in the otherwise applicable parking requirement for a manufacturing, wholesale trade or warehouse use under Section 23E.76.080.B, the Zoning Officer or Board must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.
- E. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.76.080.G, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking space and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces being provided.
- F. With the exception of uses permitted in subdivisions (C) and (D) of Section 23E.76.040, in order to approve a Use Permit under Section 23E.76.040.A, the Board must find that the floor area used for manufacturing, wholesale or warehouse trade to be removed or changed in use to a use other than manufacturing, warehousing or wholesaling, will be replaced, in the West Berkeley Plan area, by a comparable space devoted to one or more of those uses. (Ord. 7194-NS § 5, 2011; Ord. 7167-NS § 13, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

Chapter 23E.80

MU-LI MIXED USE-LIGHT INDUSTRIAL DISTRICT PROVISIONS

Sections:

23E.80.010	Applicability of Regulations
23E.80.020	Purposes
23E.80.030	Uses Permitted
23E.80.040	Special Provisions: Protected Uses
23E.80.045	Special Provisions: Changes of Use/Removal of Floor Area Used for Material Recovery Enterprise, Manufacturing, Wholesale Trade or Warehousing
23E.80.050	Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings
23E.80.060	Use Limitations
23E.80.070	Development and Performance Standards
23E.80.080	Off-Street Parking and Loading Requirements
23E.80.090	Findings

Section 23E.80.010 Applicability of Regulations

The regulations in this chapter shall apply in all Mixed Use-Light Industrial (MU-LI) Districts. In addition, the general provisions in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.020 Purposes

The purposes of the Mixed Use-Light Industrial (MU-LI) Districts are to:

- A. Implement the West Berkeley Plan's designation of a Light Manufacturing District;
- B. Encourage development of a mixed use-light industrial area for a range of compatible uses;
- C. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
- D. Encourage the creation and continuation of well paid jobs which do not require advanced degrees;
- E. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
- F. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
- G. Provide the opportunity for laboratory development in appropriate locations;
- H. Support the development of businesses which contribute to the maintenance and improvement of the environment;
- I. Allow on site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district;
- J. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

Section 23E.80.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP) or a Use Permit approved after public hearing (UP(PH)), or is Prohibited.

<i>Table 23E.80.030</i>				
Use and Required Permits				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Manufacturing and Wholesale Trade				
Increased Permit requirements in locations within 150 ft. of a residential use in either the R or MU-R district. See Section 23E.80.060.D				
Construction Products Manufacturing	UP(PH)	UP(PH)	UP(PH)	
Light Manufacturing	ZC	AUP	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, Herbicides and Fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	Permitted only in locations at least 500 ft. from R or MU-R Districts; see Section 23E.80.060.F
Primary Production manufacturing	Prohibited			
Semiconductors and related devices	Prohibited			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	See Retail Uses for storage of goods for a retail use
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studios	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, live/work limited. Section 23E.80.030.E. Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1.
Bus, cab, truck, public utility depots	AUP	UP(PH)	UP(PH)	UP(PH) required if lot is over 20,000 sq. ft. regardless of floor area
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, other building materials, drilling for oil or natural gas

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

<i>Table 23E.80.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Contractors	AUP	UP(PH)	UP(PH)	Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1.
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	
Laboratories, Commercial, Physical or Biological using: Class 1 Organisms only Class 2 Organisms Class 3 Organisms		UP(PH) UP(PH) Prohibited		Permitted only in locations at least 500 ft. from R or MU-R Districts. See Section 23E.80.060
Laboratories, Motion Picture, Photo Processing		UP(PH)		
Laboratories, Testing (including Cannabis Testing)		UP(PH)		
Material Recovery Enterprise		UP(PH)		
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing		UP(PH)		If lot is over 20,000 sq. ft.
Recycling Redemption Center		UP(PH)		If lot is over 20,000 sq. ft.
Repair Service (other than auto repair)	ZC	AUP	UP(PH)	No retail sales permitted
Research and Development	ZC	AUP		
Change of Use From Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section 23E.80.045.A.2.
Services to Buildings and Dwellings		AUP		
Automobile and Other Vehicle Oriented Uses				
Alternative Fuel/Charge Stations	AUP	UP(PH)	UP(PH)	
Automobile Parts Stores		Prohibited		
Automobile Repair and Service, including Automobile Restoration		UP(PH)		
Automobile Sales		Prohibited		
Automobile Washes, Mechanical or Self-service		Prohibited		
Automobile Wrecking Establishments	AUP	UP(PH)	UP(PH)	Permit level determined by size of lot, not floor area
Gasoline/Automobile Fuel Stations		Prohibited		Except Alternative Fuel/Charge Stations

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

<i>Table 23E.80.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Truck and Utility Trailer Rental and Leasing	AUP	UP(PH)	Prohibited	
Parking, Outdoor and Exterior Service Window Uses				
Activities or Storage outside of a building	ZC	AUP	AUP	Use lot area, not floor area; not permitted abutting R-District
Automatic Teller Machines	AUP			Exterior and when not part of a Retail Financial Service
Drive-in Uses	Prohibited			Which provide service to customers in their cars
Open Air Markets	UP(PH)	UP(PH)	UP(PH)	AUP up to 5,000 sq. ft. of lot area
Parking Lots				
Exclusively for uses located in the District	ZC for 10 or fewer spaces AUP for 11+ spaces			
Not exclusively for uses located in the District	UP(PH)			
Uses Incidental to a Permitted Use				
Amusement Devices	AUP			
Child Care Centers	ZC			Childcare for employees only
	AUP			When providing childcare for non-employees; subject to additional noticing requirements and findings in Section 23E.80.090.I
Food Service Establishment	AUP	Prohibited	Prohibited	
Live Entertainment and/or amplified music	UP(PH)			
Incidental Retail Sales of goods manufactured on site	AUP Up to 1,500 sq. ft.	UP(PH) 1,501 – 3,000 sq. ft.	Prohibited Over 3,000 sq. ft.	See limitations in Section 23E.80.060.C
Retail Sales, Personal and Household Services				
All Retail Sales (other than Incidental Retail Sales of goods manufactured on site), and Personal and Household Services	Prohibited			
Building Materials and Garden Supplies	AUP	UP(PH)	UP(PH)	
Food Product Stores				
General	AUP	Prohibited	Prohibited	AUP only up to 2,000 sq. ft.
Alcoholic Beverage Retail Sales (incidental to Food Product Stores only)	UP(PH)	Prohibited	Prohibited	
Industrial and Mining Products	AUP	UP(PH)	UP(PH)	

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

Table 23E.80.030

Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Storage of Goods for a Contiguous and Directly Accessible Retail Space	UP(PH)			AUP up to 3,000 sq. ft. permitted for retail uses within the District only, prohibited for retail uses located outside the District, except for food products stores.
All Other Retail Uses and Personal and Household Services	Prohibited			
Food and Alcohol Service, Lodging and Entertainment				
Adult-oriented Businesses	Prohibited			
Cafeterias for Employees only	ZC	Prohibited	Prohibited	
Food Service Establishments	UP(PH)			Subject to parking requirements; see Section 23E.80.080. All Food Service subject to finding under Section 23E.80.090.F; outdoor seating is prohibited
Carry Out Food Service	UP(PH)			
	AUP if less than 5000 sq. ft.			
Quick Service Restaurants	UP(PH)			
	AUP if less than 5000 sq. ft.			
Full Service Restaurants	UP(PH)			
Alcoholic Beverage Service (incidental to Food Service only)	UP(PH)			
Hotels and Motels	Prohibited			
Theaters, Stage	UP(PH)			Motion Picture Theaters are prohibited
Office Uses				
Business Support Services	AUP			AUP up to 3,000 sq. ft. Use cannot exceed 3,000 sq. ft. See definition in Sub-title 23F for permitted uses.
Medical Practitioners, including Holistic Health and Mental Health Practitioners	Prohibited			
All office uses (other than offices ancillary to a permitted use)	AUP	UP(PH)	UP(PH)	Includes publishing without printing.
Combination Commercial/Residential Uses				
Live/Work Unit				
Art/Craft Studio	AUP if no new floor area created, UP(PH) if new floor area created, or if otherwise required by Chapter 23E.20			See Section 23E.80.030.E; see Section 23E.20 for general Live/Work provisions
Non-Art/Craft Studio	Prohibited			Work is other than Art/Craft Studio

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

<i>Table 23E.80.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Residential and Related Uses				
Child Care Centers	UP(PH)			Subject to the findings in Section 23E.80.090.I
Child Care; Family Daycare Home (Small or Large)	ZC			
Clubs, Lodges, Union Halls and similar uses for persons working in the district	UP(PH)			
Dwelling Units	Prohibited			
Group Living Accommodations	Prohibited			
Major Residential Additions	Prohibited			
Public Safety and Emergency Services	UP(PH)			
Religious Assembly Uses	Prohibited			
Schools				
Public or Private (other than vocational)	Prohibited			
Vocational	ZC	AUP	UP(PH)	Must provide training for occupations and/or industries found in the West Berkeley Plan area
Shelters for Homeless Persons	Prohibited			Existing shelter shall not be considered a non-conforming use and may add floor area with a UP(PH)
Utility Substations, Buildings and Tanks	UP(PH)			
All Other uses permitted in residential districts	Prohibited			
Accessory Buildings and Structures with Urban Agriculture	ZC			Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Miscellaneous Uses				
Cemeteries, Crematories, Mausoleums and Mortuaries	Prohibited			
Circus or Carnival	UP(PH)			Temporary use only
Kennels or Pet Boarding	Prohibited			
Municipal Animal Shelter	UP(PH)			
Parks and Recreational Uses, Public or Private	Prohibited, except public recreational uses permitted with Use Permit in Outdoor Recreation Sub-zones. See Section 23E.80.030.F			

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

<i>Table 23E.80.030</i>				
Use and Required Permits (Continued)				
Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Wireless Telecommunications Facilities when located on a site with existing facilities	AUP			Subject to the requirements of Section 23C.17.100
When located on a site without existing facilities	Prohibited			Waiver may be granted if ZAB approves finding of necessity as required by Section 23C.17.100.D
Urban Agriculture				Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC			
High-Impact Urban Agriculture (HIUA)	AUP			
Legend:				
ZC -- Zoning Certificate			UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit			Prohibited -- Use not permitted	

- B. Any use not listed that is compatible with the purposes of the MU-LI District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the MU-LI District shall be prohibited.
- C. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading under Table 23E.80.030, except for storage, wholesale, and specified manufacturing, uses that are allowed with a Zoning Certificate.
- D. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table 23E.80.030.
- E. Live/Work uses may only be established pursuant to the findings set forth in Section 23E.80.090.G and shall meet the following requirements:
 - 1. The specific activity a live/work resident will engage in must be stated;
 - 2. At least one occupant must be engaged in an art or craft listed in the definition of Art/Craft Studio in Subtitle 23F or which requires space not typically available in a conventional residential setting;
 - 3. The total floor area of a Live/Work Unit shall be at least 1,000 square feet.
- F. An Outdoor Recreation Sub-zone may be designated by the Council, upon recommendation of the Commission. In an Outdoor Recreation Sub-zone, parks and outdoor recreational uses may be permitted, subject to obtaining a Use Permit.
 - 1. Properties designated as an Outdoor Recreation Sub-zone shall include all of the following:
 - a. Be designated specifically for outdoor recreational use in the West Berkeley Plan;
 - b. Be owned or under acquisition by a public agency which is subject to this Ordinance;

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

- c. Be at least five contiguous acres in area;
 - d. Not be primarily used for a conforming use as designated in the West Berkeley Plan; and
 - e. Be at least 1,000 feet from any other Outdoor Recreation Sub-zone.
2. The initial designation of an Outdoor Recreation Sub-zone shall expire five years from the designation date. In order to permit outdoor recreational uses after that date, the Council must renew the Outdoor Recreation Sub-zone designation. (Ord. 7696-NS § 20, 2020; Ord. 7625-NS § 9, 2018; Ord. 7620-NS § 22, 2018; Ord. 7561-NS § 8, 2017; Ord. 7358-NS §§ 3, 4, 2014; Ord. 7323-NS § 7, 2014; Ord. 7205-NS § 6, 2011; Ord. 7194-NS § 6, 2011; Ord. 7167-NS § 14, 2011; Ord. 7155-NS § 20, 2010; Ord. 7125-NS § 1, 2009; Ord. 6923-NS § 1 (part), 2006; Ord. 6738-NS § 1 (part), 2003; Ord. 6688-NS § 1, 2002; Ord. 6671-NS § 7, 2001; Ord. 6644-NS § 3, 2001; Ord. 6509-NS § 2 (part), 1999; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.040 Special Provisions: Protected Uses

A. The following uses which were lawfully in place as of July 6, 1989 are Protected Uses where the affected space is used exclusively for a Protected Use or the Protected Use is combined with residential use in the form of a Live/Work Unit. Protected Uses are divided into two categories, as follows:

Category 1	Art/Craft Studio
Category 2	Art Galleries, ancillary to Art/Craft Studios and when located in the same building Child Care Facility Family Daycare Home Fine arts performance, instruction and rehearsal studios (dance, music, theater) Theaters, Stage Performance, but excluding Motion Picture Theaters

- B. Except as set forth in this section, a change in use from a protected use to any other use, protected or not, may only be authorized pursuant to Section 23E.80.090.C.
- C. A change of use of less than 5,000 square feet, from one protected use to another within the same category, shall be allowed with a Zoning Certificate.
- D. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or more from one protected use to another in the same category.
- E. The Zoning Officer may issue an Administrative Use Permit for a change of use of less than 5,000 square feet from one category of protected use to another.
- F. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from one protected use to another category of protected use.
- G. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or less from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.
- H. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.
- I. Any protected use specified in this section which is owner-occupied and which protected use occupies all of the non-residential floor area within a building shall not be subject to the requirements of this section. (Ord. 7696-NS § 22, 2020; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

Section 23E.80.045 Special Provisions: Changes of Use/Removal of Floor Area Used for Material Recovery Enterprise, Manufacturing, Wholesale Trade or Warehousing

- A. Notwithstanding the provisions of Section 23E.80.030, no floor area in a building in which at least 33% of the floor area is used for any aspect of a Material Recovery Enterprise, manufacturing, warehousing or wholesale trade may be changed to uses other than Material Recovery Enterprise manufacturing, warehousing or wholesale trade without a Use Permit, except as otherwise provided in this Section.
1. The following uses may be established within protected Manufacturing, Material Recovery Enterprise, Wholesale Trade and/or Warehousing space, subject to the permit levels in Section 23E.80.030: Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor use. The issuance of a Use Permit for Warehouse-based Non-store Retail, Art/Craft Studio, and Contractor uses under this subdivision shall not result in the removal or elimination of any protections for the prior use in Section 23E.80.045.
 2. For the period of August 1, 2011, through July 31, 2016, space established prior to January 1, 2010, as protected, Warehouse and Wholesale Trade use may be changed to Research and Development (R&D) use as set forth below; provided, that issuance of a permit for R&D use under this subdivision shall not result in the removal or elimination of any protection for the prior use established through this subdivision and such protections shall remain if the R&D use ceases. As of August 1, 2016, there shall be no numerical limit on the number of gross square feet of protected Warehouse and Wholesale space that may be converted to R&D use within the MM (BMC 23E.76) and MU-LI (BMC 23E.80) zoning districts.
 - i. A combined total of 270,000 gross square feet of protected Warehouse and Wholesale space may be converted to R&D use within the MM (BMC 23E.76) and MU-LI (BMC 23E.80) zoning districts.
 - ii. No more than 150,000 gross square feet of this space may have been occupied on or after August 1, 2011, whether or not the use was legally established.
 - iii. The Zoning Officer may approve an Administrative Use Permit for a change of use of up to 20,000 gross square feet from protected Warehouse and/or Wholesale Trade to Research and Development (R&D).
 - iv. The Board may approve a Use Permit for a change of use over 20,000 gross square feet of protected Warehouse and/or Wholesale Trade to Research and Development (R&D).
 - v. Planning staff will report to the City Council once a cumulative total of 50,000 square feet in the MM and MU-LI districts of protected Warehousing and/or Wholesale Trade have been converted to Research and Development Use (or at the end of one year, whichever occurs first), with additional reports to be provided in the same increments thereafter. The reports are to include the gross square footage of building space converted and the number and type of jobs expected to be created. No later than April 15, 2016, the City Manager shall provide a cumulative report to the City Council and schedule an action item for the Council's consideration so that it can provide direction as to what, if any, modifications it wishes to make to this Section.
- B. Except as provided herein and in Paragraphs D and F of this section, no more than 25% of the space used for Material Recovery Enterprise, manufacturing, warehousing or wholesale trade in a building shall be removed and/or changed to another use, except as authorized by a Use Permit. No Use Permit under this subdivision may be issued absent the appropriate finding under Section 23E.80.090.D.
- C. The Zoning Officer may issue an Administrative Use Permit to change the use of less than 20,000 square feet of floor area used for Material Recovery Enterprise, manufacturing, warehousing, or wholesale trade as long as the area converted is less than 25% of the space used for those purposes.
- D. On a property consisting of a lot (or group of abutting and confronting lots) under one ownership containing more than one building, more than 25% of the use of a particular building or portion of building may be

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

changed from Material Recovery Enterprise, manufacturing, warehousing, or wholesale, provided that for the property as a whole no more than a cumulative total of 25% of the floor area used for Material Recovery Enterprise, manufacturing, wholesale trade or warehousing is changed to another use.

- E. As used in this Section, space used for manufacturing, warehousing or wholesale trade means space which is being used, or was previously used for the manufacture, assembly, processing, repair, testing (including prototype manufacturing), storage, display (other than in retail stores) or distribution of goods, unless the manufacturing, wholesale trade, or warehousing use is or was demonstrably ancillary to another use. For purposes of this section, use of the space shall be the use as of January 1, 1996 (or if vacant on that date, the most recent previous use).
- F. Pursuant to the amendment to the West Berkeley Plan concerning 2929 Seventh Street, also known as the Langendorf Building, space used or last previously used for manufacturing, warehousing or wholesale trade in that building may be changed to other permitted uses provided that not less than 30,000 square feet of floor area is maintained for manufacturing, warehousing or wholesale trade uses. Retail Sales, Office Uses and Food and Alcohol Service Uses otherwise prohibited in this District, but permitted in the C-W District, may be permitted at this property, with a Use Permit, provided that the total floor area of such uses on the property in both this District and the C-W District does not exceed 10,000 square feet.
- G. The limitations of this section on changes of use shall be cumulative. (Ord. 7358-NS § 5, 2014; Ord. 7194-NS § 7, 2011; Ord. 7167-NS § 15, 2011; Ord. 7125-NS § 5, 2009; Ord. 6509-NS § 3 (part), 1999; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.050 Physical Changes to Buildings: Construction of New Floor Area, Conversions of Existing Buildings

- A. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor or mezzanine levels within or onto existing buildings.
- B. Gross floor area of 10,000 square feet or more but less than 20,000 square feet for any use shall not be created unless an Administrative Use Permit is obtained.
- C. Gross floor area of 20,000 square feet or more for any use shall not be created unless a Use Permit is obtained from the Board.
- D. Use Permits required for building conversions of existing space are set forth in Table 23E.80.050 and the findings required in Section 23E.80.090.E. Previously separated spaces combined into a larger space require a Zoning Certificate.

Table 23E.80.050

Conversion (Division of Space) Regulations			
Initial space being divided into:	2 – 5 Spaces	6 – 9 Spaces	10 or More Spaces
	ZC	AUP	UP(PH)

(Ord. 7125-NS § 4, 2009; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.060 Use Limitations

- A. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.80.030 and the limitations set forth in Section 23E.80.030.D.

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

- B. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.80.030.
- C. Incidental Retail Sales shall meet the following:
 - 1. Signs for Incidental Retail Sales use shall be of such a size and character as to clearly indicate that the retail use is not the Primary Use of the site;
 - 2. Retail Sales floor area shall not exceed 10% of total Gross Floor Area; and
 - 3. No outdoor sales or food service is allowed.
- D. Alcoholic Beverage Sales or Service Uses and Live/Work Uses shall be subject to the requirements of Chapters 23E.16 and 23E.20 in addition to the requirements of this District.
- E. No manufacturing or wholesale trade use may be established or expanded within 150 feet of a residential use in an R-District or in the MU-R District except as set forth herein:
 - 1. If the use would require a Zoning Certificate in other locations of the MU-LI District, an Administrative Use Permit is required;
 - 2. If the use would require an Administrative Use Permit in other locations of the MU-LI District, a Use Permit is required.
- F. Pharmaceutical Manufacturing and Commercial Physical or Biological Laboratories using Class 2 Organisms are prohibited within 500 feet of a Residential or Mixed Use-Residential District.
- G. For purposes of the Noise Ordinance, Chapter 13.40, the MU-LI District shall be considered an Industry District.
- H. Notwithstanding any other provision of this Ordinance, an existing use may be modified or intensified without a Use Permit if no provision of this chapter requires a Use Permit and if the Zoning Officer determines that the modification or intensification of the use can reasonably be expected not to increase any impact regulated under environmental performance standards. (Ord. 7358-NS § 6, 2014; Ord. 7167-NS § 16, 2011; Ord. 6688-NS § 2 (part), 2002; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.070 Development and Performance Standards

- A. Except as permitted in Chapter 23B.36, the Floor Area Ratio (FAR) shall not exceed two.
- B. The height of a main building shall not exceed 45 feet.
- C. No yards for main buildings, accessory buildings, or accessory structures shall be required, except that:

When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards, provided that a front or side yard confronting an R zone may be reduced to not less than the smaller of the abutting front yards, subject to an Administrative Use Permit, unless a Use Permit is required to approve the use or structure, in which case a Use Permit shall be required.

- D. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials, or any other potential off-site environmental impacts. All uses shall be subject to these standards.

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

- E. Projects that may create environmental impacts as described in the West Berkeley Project Final EIR shall be subject to the adopted Mitigation Monitoring Program. (Ord. 7167-NS §§ 17 – 19, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.080 Off-Street Parking and Loading Requirements

- A. For each of the following uses the minimum number of off-street parking spaces shall be provided and in accordance with Chapter 23E.28 except as set forth in Section 23E.80.080.E. Construction of new floor area and changes of use of existing floor area shall satisfy the parking requirements of this section.

Table 23E.80.080	
Parking Required*	
Use	Number of spaces
Art/Craft Studio	One per 1,000 sq. ft. of floor area
Laboratories	One per 650 sq. ft. of floor area
Live/Work Units	If any non-resident employees and/or customers and clients are permitted in any work area, there shall be one parking space for each 1,000 sq. ft. of such work area
Manufacturing uses (assembly, production, storage and testing space only), Storage, Warehousing and Wholesale Trade	One space per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq. ft.; one space per 1,500 sq. ft. of floor area for spaces of 10,000 sq ft or more
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
All other non-residential uses, unless otherwise specified in Subsection B	Two per 1,000 sq. ft. of floor area
* See Subsection E for substitutions of up to 10% with bicycle/motorcycle parking	

- B. Unless otherwise specified in Subsection A, uses designated in this chapter as Other Industrial Uses; Automobile and Other Vehicle Oriented Uses; Outdoor Uses; Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of off-street parking demand generated by the particular use and comparable with specified standards for other uses.
- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section 23E.28.070.
- D. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section 23E.28.030 are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.
- E. Subject to the finding in Section 23E.80.090.H, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.
- F. Notwithstanding the requirements of Section 23E.28.080 (the general regulations concerning screening and landscaping of off-street parking), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific Railroad).

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

- G. In buildings with one or more manufacturing, wholesale trade or warehouse use, all uses shall satisfy the loading space requirements of Chapter 23E.32. All uses which have one or more loading spaces shall retain at least one such space.
- H. Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall satisfy Chapter 23E.32. (Ord. 7751-NS § 23, 2021; Ord. 6856-NS § 23 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.80.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
 - B. A proposed use or structure must:
 - 1. Be consistent with the purposes of the District;
 - 2. Be compatible with the surrounding uses and buildings;
 - 3. Be consistent with the adopted West Berkeley Plan;
 - 4. Be unlikely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings in the District from manufacturing, wholesale trade or warehousing uses;
 - 5. Be designed in such a manner to be supportive of the light industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows and signs; and all other externally visible aspects of the design of the building and site. If the building and/or site is split between the MU-LI District and the West Berkeley Commercial District that there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI District and the portions within the West Berkeley Commercial District;
 - 6. Be able to meet any applicable performance standards as described in Section 23E.80.070.D.
 - C. In order to approve a Use Permit under Section 23E.80.040, the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:
 - 1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.80.040.I or by reason of having been established after July 6, 1989;
 - 2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.
 - D. Except as permitted under 23E.80.045, subdivisions A.1 or A.2, in order to approve a Use Permit under Section 23E.80.045 to change the use of or remove more than 25% of the floor area of a building currently or most recently used for manufacturing, wholesale trade or warehousing, the Zoning Officer or Board must find:
 - 1. Any necessary Use Permits that have been approved to provide comparable quality replacement manufacturing, wholesale trade and/or warehousing space in Berkeley at a comparable rent and that such replacement space will be available before the demolition or change of use of the space; or

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

2. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the District which make it financially infeasible to reuse the building for any of the range of manufacturing, wholesale trade or warehouse uses permitted in the District. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings; and
 3. Appropriate mitigation has been made for loss of the manufacturing, warehousing or wholesale trade space in excess of 25% of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
- E. In order to approve a Use Permit for division of space under Section 23E.80.050.D, the Zoning Officer or Board must find that the conversion would not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted and either:
1. The conversion can be reasonably expected to better serve the purposes of the District than leaving the space intact; or
 2. The conversion would create spaces which could cross-subsidize larger industrial spaces.
- F. In order to approve a Permit to establish or expand a Food Service Establishment, the Zoning Officer or Board must find that the establishment of the food service 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. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet under Section 23E.80.030, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.
- G. In order to approve a Use Permit to establish or modify a Live/Work Unit, the Zoning Officer or Board must make the findings required in Chapter 23E.20, as well as the following:
1. The applicants have made adequate provisions to insure that within the Live/Work Units, occupants of the Live/Work Units will only engage in the occupations listed in the definitions of Art/Craft Studios; and
 2. Development of such Live/Work Units is not incompatible with adjacent and nearby industrial uses; and
 3. The applicants have made adequate provisions to insure that occupant of each unit of the Live/Work space will be notified in writing that the unit is in the MU-LI District and that light manufacturing is the primary activity in the District, including a requirement that each occupant indicates that they have read and understood this information by means of a rider to a lease or a covenant to a deed, as appropriate.
- H. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.80.080.E, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.
- I. In order to approve a Permit for the establishment or expansion of a child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:
1. Development of the school, child care center, or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses, including industrial uses;
 2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;

Chapter 23E.80: MU-LI Mixed Use-Light Industrial District Provisions

3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-LI District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review. (Ord. 7696-NS § 23, 2020; Ord. 7194-NS § 8, 2011; Ord. 7167-NS §§ 20 – 22, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.84

MU-R MIXED USE-RESIDENTIAL DISTRICT PROVISIONS

Sections:

23E.84.010	Applicability of Regulations
23E.84.020	Purposes
23E.84.030	Uses Permitted
23E.84.040	Special Provisions: Protected Uses
23E.84.050	Physical Changes to Buildings: Conversions of Existing Buildings, Requirements for Use Permits
23E.84.060	Use Limitations and Special Permit Requirements
23E.84.070	Development Standards
23E.84.080	Off-Street Parking and Loading Requirements
23E.84.090	Findings

Section 23E.84.010 Applicability of Regulations

The regulations in this chapter shall apply in all Mixed Use-Residential (MU-R) Districts. In addition, general provisions contained in Sub-title 23C shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.020 Purposes

The purposes of the Mixed Use-Residential (MU-R) Districts are to:

- A. Implement the West Berkeley Plan's designation of a Mixed Residential District;
- B. Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses;
- C. Strengthen residential concentrations which exist within the District;
- D. Provide appropriate locations for a broad range of live/work activities to occur;
- E. Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R;
- F. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district;
- G. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment;
- H. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed use West Berkeley context;
- I. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully;
- J. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the District, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the District. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Section 23E.84.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited.

Table 23E.84.030				
Use and Required Permits				
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Offices				
Business Support Service	AUP if 5,000 or less; UP(PH) if more than 5,000			As defined in Sub-title 23F
Financial Services, Retail (Banks)	Prohibited			
Medical Practitioners, including Holistic Health and Mental Health Practitioners	AUP if 5,000 or less; UP(PH) if more than 5,000			Subject to additional parking requirements; see Section 23E.84.080.B
Other Professional, Government, Institutional and Utility Offices	AUP if 5,000 or less; UP(PH) if more than 5,000			
Manufacturing and Wholesale Trade				
Manufacturing Uses				
Construction Products Manufacturing	Prohibited			
Light Manufacturing	AUP if 5,000 or less; UP(PH) if more than 5,000			Subject to the finding under Section 23E.84.090.K and parking requirements under Section 23E.84.080.B
Primary Production Manufacturing	Prohibited			
Warehouses				
Mini-storage Warehouses	Prohibited			
Warehouses or Storage	UP(PH)			See Retail Uses for Storage of Goods for a Retail Use; also see parking requirements under Section 23E.84.080.B
Wholesale Trade (including Cannabis Distributors)	AUP if 5,000 or less; UP(PH) if more than 5,000			Subject to parking requirements; see Section 23E.84.080.B
Other Industrial Uses				
Art/Craft Studios	Under 1,000	1,000 – 20,000	Over 20,000	Subject to parking requirements; see Section 23E.84.080.B. Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.84.030.C.
	ZC	AUP	UP(PH)	
Bus, cab, truck, and public utility depots	UP(PH)			
Commercial Excavation	Prohibited			Including earth, gravel, minerals or other building materials including drilling for, or removal of, oil or natural gas
Contractors	UP(PH)			Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.84.030.C.

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.030				
Use and Required Permits (Continued)				
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Dry Cleaning and Laundry Plants	UP(PH)			
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	Under 1,000	1,000 – 20,000	Over 20,000	
	ZC	AUP	UP(PH)	
Personal, Household and Business Services				
All Personal and Household Services, except those listed below	AUP			As defined in Sub-title 23F, except those otherwise listed below
Laundromats	AUP			
Veterinary Clinics, including Pet Hospitals	UP(PH)			
Video Tape/Disk Rental Stores	Prohibited			
Retail Uses				
Alcoholic Beverage Retail Sales, including Liquor Stores and Wine Shops	Prohibited			Except Ancillary Sale of Alcoholic Beverages produced or bottled on site permitted under Ancillary Sale of Goods Manufactured on Site provisions subject to UP(PH)
Arts and crafts supplies	AUP if 5,000 or less; UP(PH) if more than 5,000			
Building Materials and Garden Supply Stores, Nurseries	AUP			
Food product stores, general and specialized	AUP if 5,000 or less; UP(PH) if more than 5,000			
All Other Retail Sales Uses (other than Incidental Retail Sales of goods manufactured on site)	Prohibited			
Pet Stores, including Sales and Grooming of Animals (but not boarding)	Prohibited			
Storage of Goods for a contiguous and directly accessible retail space	AUP if 3,000 or less; UP(PH) if more than 3,000			Permitted for retail spaces within the District only, prohibited for retail spaces wholly or partially outside the District
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses				
Adult-oriented Businesses	Prohibited			
Alcoholic Beverage Service (incidental to Food Service only)	UP(PH)			
Amusement Device Arcades	Prohibited			
Commercial Recreation Center	Prohibited			
Dance, Exercise, Martial Arts and Music Studios	UP(PH)			

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.030		
Use and Required Permits (Continued)		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Entertainment Establishments	UP(PH)	Including Nightclubs and any establishments with live entertainment and/or amplified music
Food Service Establishments:		All food service establishments subject to findings under Section 23E.84.090.F. Quick and Full Service Restaurants subject to additional parking requirements; see Section 23E.84.080.B
Carry Out Food Service Stores	UP(PH)	
	AUP if less than 5,000 sq. ft.	
Quick Service Restaurants	UP(PH)	
	AUP if less than 5,000 sq. ft.	
Full Service Restaurants	UP(PH)	
Group Class Instruction for Business, Vocational or Other Purposes	UP(PH)	
Gyms and Health Clubs	Prohibited	
Hotels, Tourist, including Inns, Bed and Breakfasts, and Hostels	Prohibited	
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	Prohibited	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores, including Parts Service	UP(PH)	
Automobile Repair and Service, including Automobile Restoration	UP(PH)	
All Other Automobile Uses	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage outside of a building		
When not abutting an R District	AUP	
When abutting an R District	UP(PH)	
Automatic Teller Machines	AUP	
Drive-in uses, which provide service to customers in their cars	Prohibited	
Parking Lots		
Exclusively for uses located in the District	ZC	
Not exclusively for uses located in the District	UP(PH)	
Recycling Redemption Centers	AUP	

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.030		
Use and Required Permits (Continued)		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Combination Commercial/Residential Uses		
Live/Work Units		
Live/Work Units	AUP	When satisfying the requirements of Sections 23E.84.070 and 23E.84.080.B and Chapter 23E.20, adding or changing the use of less than 5,000 sq. ft. of floor area, creating 4 or fewer units, and not changed from a dwelling unit. The area within a Live/Work Unit, including both residential and non-residential space, shall be not less than 1,000 sq. ft. Must meet the location limitations in Section 23E.84.060.G and the findings in Section 23E.84.090.D
Live/Work Units	UP(PH)	When not meeting one or more of the above requirements, or otherwise required by Chapter 23E.20. Must meet the location limitations in Section 23E.84.060.G and the findings in Section 23E.84.090.D
Other combinations of residential and non-residential uses (exclusive of home occupations) permitted in the District	UP(PH)	Subject to the finding in Section 23E.84.090.I
Uses Incidental to a Permitted Use		
Amusement Devices (up to 3)	AUP	
Child Care Centers	ZC	Childcare for employees only
	AUP	When providing childcare for non-employees; subject to findings in Section 23E.84.090.H and public notification of a decision within a 300 foot radius of the subject property.
Food Service Establishment	AUP	
Incidental Retail Sales of goods manufactured on site	AUP	See limitations in Section 23E.84.060.C
Storage of Goods (over 25% of gross floor area)	AUP	
Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.030		
Use and Required Permits (Continued)		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Additions, Major Residential	AUP	See Definition in Sub-title 23F. Subject to finding required under 23E.84.090.L; see limitations on location in Section 23E.84.060.G
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	Subject to the findings in Section 23E.84.090.H
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes (Changes of Use)	ZC	Subject to parking requirements; see Section 23E.84.080.B
Community Centers	UP(PH)	
Dwelling Units		See limitation on location in Section 23E.84.060.G. Subject to development standards of Section 23E.84.070 and parking requirements in Section 23E.84.080.B
1 – 4 Units	AUP	
5+ Units	UP(PH)	
Group Living Accommodations, subject to R-3 District Standards	UP(PH)	See limitations on location in Section 23E.84.060.G
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Libraries	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under 23E.84.090.H
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.030		
Use and Required Permits (Continued)		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section 23E.84.090.H
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060
Miscellaneous Uses		
Cafeteria, Employee or Residential	AUP	
Cemeteries, Crematories, Mausoleums	Prohibited	
Circus or Carnival	UP(PH)	
Kennels, Pet Boarding, other services for pets	UP(PH)	
Mortuaries	UP(PH)	
Wireless Telecommunications Facilities when located on site with existing facilities	AUP	Subject to the requirements of Section 23C.17.100
When located on a site without existing facilities	Prohibited	Waiver may be granted if ZAB approves finding of necessity as required by Section 23C.17.100.D
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	Subject to 23C.26
Legend:		
ZC -- Zoning Certificate	UP(PH) -- Use Permit, public hearing required	
AUP -- Administrative Use Permit	Prohibited -- Use not permitted	

- B. Any use not listed that is compatible with the purposes of the MU-R District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the MU-R District shall be prohibited.
- C. Notwithstanding Section 23E.84.090, the following uses may be established within protected Manufacturing, Wholesale Trade and/or Warehousing space, subject to the permit levels in Section 23E.84.030: Art/Craft Studio, and Contractor Use. The issuance of a Use Permit for Art/Craft Studio and/or Contractor uses under this subdivision shall not result in the removal or elimination of any protections for the prior use in Chapter 23E.84. (Ord. 7753-NS § 22, 2021; Ord. 7696-NS § 21, 2020; Ord. 7625-NS § 10, 2018; Ord. 7620-NS § 23, 2018; Ord. 7599-NS § 29, 2018; Ord. 7521-NS § 17, 2017; Ord. 7358-NS §§ 7, 8, 2014; Ord. 7323-NS § 8, 2014; Ord. 7205-NS § 7, 2011; Ord. 7194-NS §§ 9, 10, 2011; Ord. 7167-NS § 23, 2011; Ord. 7155-NS § 21, 2010; Ord. 6909-NS § 10, 2006; Ord. 6671-NS § 7, 2001; Ord. 6644-NS § 3, 2001; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Section 23E.84.040 Special Provisions: Protected Uses

A. The following uses which were lawfully in place as of July 6, 1989 are Protected Uses where the affected space is used exclusively for a Protected Use or the Protected Use is combined with residential use in the form of a Live/Work Unit. Protected Uses are divided into two categories, as follows:

Category 1	Art/Craft Studio
Category 2	Art Galleries, ancillary to Art/Craft Studios and when located in the same building Child Care Facility Family Daycare Home Fine arts performance, instruction and rehearsal studios (dance, music, theater) Theaters, Stage Performance, but excluding Motion Picture Theaters

- B. Except as set forth in this section, a change in use from a protected use to any other use, protected or not, may only be authorized pursuant to Section 23E.84.090.C.
- C. A change of use of less than 5,000 square feet, from one protected use to another within the same category shall be allowed with a Zoning Certificate.
- D. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or more from one protected use to another in the same category.
- E. The Zoning Officer may issue an Administrative Use Permit for a change of use of less than 5,000 square feet from one category of protected use to another.
- F. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from one protected use to another category of protected use.
- G. The Zoning Officer may issue an Administrative Use Permit for a change of use of 5,000 square feet or less from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.
- H. The Board may approve a Use Permit for a change of use of 5,000 square feet or more from a protected use to a non-protected use that occupies all of the non-residential floor area in the building.
- I. Any protected use specified in this section which is owner-occupied and which protected use occupies all of the non-residential floor area within a building shall not be subject to the requirements of this section. (Ord. 7696-NS § 24, 2020; Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.050 Physical Changes to Buildings: Conversions of Existing Buildings, Requirements for Use Permits

- A. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor or mezzanine levels within or onto existing buildings.
- B. Gross floor area of more than 5,000 square feet but less than 10,000 square feet shall not be created unless an Administrative Use Permit is obtained. Gross floor area of 10,000 or more square feet shall not be created unless a Use Permit is obtained from the Board.
- C. Existing spaces of 5,000 square feet or more shall not be converted unless a Use Permit is obtained from the Board. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.060 Use Limitations and Special Permit Requirements

- A. No commercial or manufacturing use shall operate except during the hours between 6:00 a.m. to 10:00 p.m., except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

- B. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading, in Table 23E.84.030; provided, that incidental storage, wholesale and specified manufacturing uses are allowed with a Zoning Certificate in this District; no additional permits are required.
- C. Incidental Retail Sales shall meet the following:
 - 1. Signs for Incidental Retail Sales use shall be of such a size and character as to clearly indicate that the retail use is not the Primary Use of the site;
 - 2. Retail Sales floor area shall not exceed 10% of total Gross Floor Area; and
 - 3. No outdoor sales or food service is allowed.
- D. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading, in Table 23E.84.030.
- E. Alcoholic Beverage Sales or Service and Live/Work Uses shall be subject to the requirements of Chapters 23E.16 and 23E.20, in addition to the requirements of this District.
- F. For purposes of the Noise Ordinance, Chapter 13.40, the MU-R District shall be considered an R-3 District.
- G. No new dwelling unit, group living accommodation, or Live/Work Unit may be established within 150 feet of a property in the Manufacturing or Mixed Manufacturing District or a property containing a construction product manufacturing or primary production manufacturing use unless a Use Permit is obtained. (Ord. 7167-NS § 24, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.070 Development Standards

- A. The Floor Area Ratio (FAR) shall not exceed one, except that buildings in which at least 50% of the floor area is used for residential space and/or for live/work space may have a FAR not to exceed one-and-a-half.
- B. There shall be no more than one dwelling unit or one live/work space per each 1,250 feet of lot area; provided, however, there may be one additional unit for any remaining lot area which may be less than 1,250 square feet but greater than 750 square feet.
- C. No lot with a width of less than 40 feet shall be created.
- D. The height for a main building shall not exceed the following limits and satisfy the following requirements:

<i>Table 23E.84.070</i>			
Building Height Limitations *			
<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>	<u>Special Requirements/Limitations</u>
Art/Craft and/or Light Manufacturing (with no other non-residential uses)	35	2	3 stories permitted when on a block with no dwelling units
Live/Work	28	3	UP(PH) for a height greater than 28 ft., up to 35 ft.
Other Non-residential	35	2	
Residential*	35	3	
*For purposes of calculating the permitted number of stories, buildings in which at least 50% of the floor area is used for residential and/or live/work purposes shall be considered residential			

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

E. The yards for main buildings shall be as follows:

1. Each lot shall have a front yard of not less than five feet; however, ten feet shall be required for any lot confronting a property situated in an R District, provided that this confronting front yard may be reduced to not less than the smaller of the abutting front yards with an Administrative Use Permit; unless a Use Permit is required to approve the use or structure, in which case a Use Permit shall be required by the Board.
2. No side or rear yards shall be required, except that if the side or rear of a lot abuts a street, a yard of not less than five feet shall be required; however, if the side or rear of a lot abuts or confronts either a property with one or more dwelling units or a property situated in an R District, the side or rear yard shall be either ten feet, or 10%, whichever is less, of the respective width or depth of the lot.

F. Fences shall be required as follows:

1. Where the side or rear of a lot used for residential purposes abuts on any other lot used for residential purposes, no fence over six feet in height may be erected closer than eight feet to any main residential building; provided, however, that such fence need not be erected more than four feet from the property line. This provision shall not apply when the lot used for residential purposes is under the same ownership as the property on which such fence or building is to be erected.
2. If a building which will contain a manufacturing use is constructed on a lot where the side or rear abuts a lot in the MU-R District used for residential purposes, or if a building which will contain a residential use is constructed on a lot where the side or rear abuts a lot in the MU-R District used for manufacturing purposes, a fence of not less than eight feet which incorporates sound absorbent material shall be erected between the manufacturing and residential use. If there is a more appropriate alternative method of providing buffering between the residential and the manufacturing use, this requirement may be modified by obtaining an AUP.

G. Each lot shall contain the following minimum usable open space areas:

1. One hundred fifty (150) square feet of usable open space for each dwelling unit;
2. Forty (40) square feet of usable open space for each live/work unit.

H. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts. All uses shall be subject to these standards. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.080 Off-Street Parking and Loading Requirements

A. Unless otherwise specified in Subsections B, or in Table 23E.84.080, the district minimum standard parking requirement is two spaces per 1,000 square feet of gross floor area of non-residential space, in accordance with the requirements of Chapter 23E.28.

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
Art/Craft Studio	One per 1,000 sq. ft. of floor area
Community Care Facilities	One per two non-resident employees
Dwelling Units	None required

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

Table 23E.84.080	
Parking Required*	
Use	Number of spaces
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Live/Work Units	If any non-resident employees and/or clients are permitted in any work area there shall be one parking space for the first 1,000 sq. ft. of work area and one additional parking space for each additional 750 sq. ft. of work area.
Manufacturing Uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Nursing Homes	One per each three employees
Restaurants and Food Service	One per 300 sq. ft. of floor area
Storage, Warehousing and Wholesale Trade	One per 1,000 sq. ft. of floor area for spaces of less than 10,000 sq.ft.; one per 1,500 sq. ft. for spaces of 10,000 sq. ft. or more
*See Subsection G for substitutions of up to 10% with bicycle/motorcycle parking	

- B. Unless otherwise specified in Subsection G or in Table 23E.84.080, uses designated in this chapter as Automobile and Other Vehicle Oriented Uses; Outdoor Uses; or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based on the amount of parking demand generated by the particular use and comparable with specified standards for other uses.
- C. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, and in accordance with the requirements of Section 23E.28.070.
- D. Off-street parking required by this section may be satisfied by the provision of leased spaces, provided that the requirements of Section 23E.28.030 are met; however, the leased parking spaces may be within 500 feet of the property it serves, provided that leased parking at a distance greater than 500 feet may be approved by an Administrative Use Permit.
- E. If the Zoning Officer or Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.
- F. No off-street parking space which is required by this Ordinance, including Use Permits issued under this Ordinance, shall be removed; provided, however, any off-street parking spaces which are provided in excess of the number required at the time of application may be removed.
- G. Subject to the finding in Section 23E.84.090.J, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.
- H. In buildings with manufacturing, wholesale trade or warehouse uses, loading spaces shall be maintained so as to meet the requirements of Chapter 23E.32.

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

- I. Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall satisfy Chapter 23E.32. (Ord. 7751-NS § 24, 2021; Ord. 6856-NS § 24 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.84.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
 1. Be consistent with the purposes of the District;
 2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
 3. Be consistent with the adopted West Berkeley Plan;
 4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
 5. Be designed in such a manner to be supportive of the character and purposes of the District; and
 6. Be able to meet any applicable performance standards as described in Section 23E.84.070.H.
- B. A proposed use or structure must:
 1. Be consistent with the purposes of the District;
 2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
 3. Be consistent with the adopted West Berkeley Plan;
 4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
 5. Be designed in such a manner to be supportive of the character and purposes of the District; and
 6. Be able to meet any applicable performance standards as described in Section 23E.84.070.H.
- C. In order to approve a Use Permit under Section 23E.84.040, the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:
 1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.84.040.I or by reason of having been established after July 6, 1989;
 2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.
- D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section 23E.20.090 and must also make the following findings:
 1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;
 2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that they will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;
 3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

- E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:
1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;
 2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.
- F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.
- G. In order to approve an Administrative Use Permit or Use Permit for a Home Occupation with customer visits and/or shipping and handling of goods, the Zoning Officer or Board must make the findings set forth in Section 23C.16.030.
- H. In order to approve a Use Permit for the establishment or expansion of a school, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:
1. Development of the school, child care center, or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;
 2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;
 3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.
- I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.
- J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

Chapter 23E.84: MU-R Mixed Use-Residential District Provisions

- K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:
1. The manufacturer is capable of meeting all applicable performance standards; and
 2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
- L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.
2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7753-NS § 2, 2021; Ord. 7696-NS § 25, 2020; Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.88: SP Specific Plan District Provisions

Chapter 23E.88

SP SPECIFIC PLAN DISTRICT PROVISIONS

Sections:

23E.88.010	Applicability of Regulations
23E.88.020	Purpose
23E.88.030	Uses Permitted
23E.88.040	Reserved
23E.88.050	Reserved
23E.88.060	Reserved
23E.88.070	Reserved
23E.88.080	Reserved
23E.88.090	Findings

Section 23E.88.010 Applicability of Regulations

The regulations in this Chapter shall apply in all SP Districts. In addition, the general provisions in Sub-title 23C and Chapters 23E.04-32 (including Design Review) shall apply; and, in the case of a conflict between these provisions and a Specific Plan, the Specific Plan's provisions shall govern. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.88.020 Purpose

The purpose of the Specific Plan (SP) Districts is to establish the authority of adopted Specific Plans to govern use and development requirements in cases where such plans apply and to establish which provisions of this Ordinance apply to these Districts. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.88.030 Uses Permitted

- A. All uses permitted by the applicable adopted Specific Plan, subject to obtaining a Master Development Plan permit, and all other permits required by the Specific Plan, in accordance with the procedures described in the following section. In the case where the applicable Specific Plan or Master Development Plan is silent on a use for which a Use Permit would be required under this Ordinance, a Use Permit shall be required.
- B. Each application for a Master Development Plan permit or for other permits under the Specific Plan, other than applications for Use Permits and Variances, shall be submitted according to the requirements of the Specific Plan and on the forms furnished by the Secretary of the Planning Commission. Fees for all applications shall be as established by Resolution of the City Council, as may be amended from time to time.
- C. Where a Specific Plan has been adopted, and a Master Development Plan approved thereunder, the procedures for obtaining Use Permits and Variances for the property subject to the Master Development Plan, including application review and fees, shall be those set forth in Chapters 23B.32 and 23B.44, respectively.
- D. Where a Specific Plan exempts a permitted use from the requirements of a Master Development Plan and a Use Permit, the use shall be subject to Zoning Conformance procedures as set forth in Chapter 23B.20. (Ord. 6881-NS § 1, 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.88.040 Reserved

Section 23E.88.050 Reserved

Chapter 23E.88: SP Specific Plan District Provisions

Section 23E.88.060 **Reserved**

Section 23E.88.070 **Reserved**

Section 23E.88.080 **Reserved**

Section 23E.88.090 **Findings**

- A. In order for any Master Development Plan Permit to be granted under this Section, all findings required by the specific plan must be made.
- B. No Use Permit shall be granted under this District's provisions unless the Board or the Zoning Officer makes the finding under Section 23B.32.040. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.92: U Unclassified District Provisions

Chapter 23E.92

U UNCLASSIFIED DISTRICT PROVISIONS

Sections:

23E.92.010	Applicability of Regulations
23E.92.020	Purposes
23E.92.030	Uses Permitted
23E.92.040	Reserved
23E.92.050	Reserved
23E.92.060	Reserved
23E.92.070	Development Standards
23E.92.080	Reserved
23E.92.090	Findings

Section 23E.92.010 Applicability of Regulations

The regulations contained in this Chapter shall apply in all U Districts. In addition, the general provisions in Subtitle 23C and Chapters 23E.04-32 (including Design Review) shall apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.92.020 Purposes

The purposes of the Unclassified (U) Districts are to:

- A. Implement the Master Plan's designations for those areas encompassed in the U District Zoning classification;
- B. Provide a Zoning District designation until such areas are classified into residential, commercial or manufacturing Districts. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.92.030 Uses Permitted

- A. All uses are permitted that are not otherwise prohibited by law, provided that a Use Permit shall be secured for any use to be established, as per the procedures described in the following Section.
- B. Each application for a Use Permit shall be reviewed as follows, in lieu of the procedures under Chapter 23B.32:
 1. Each application shall be first submitted to the Planning Commission with the Commission making a report to the Board; except that if the Commission fails to take an action on the report within thirty (30) days after a Use Permit application is deemed complete, this requirement shall be deemed to have been complied with;
 2. After the Commission report is forwarded to the Board, the Board shall take an action to approve, conditionally approve or deny the application. However, the Board's decision shall not become effective until after action by the Council as provided below. Since all decisions regarding U District Use Permits by the Board require Council review, no appeals of the Board's decision shall be allowed and the appeal procedures under Section 23B.32.050 shall not apply to such U District Use Permit application reviews;
 3. A report of the Board's decision, including findings and any conditions, together with the Commission's report on the matter, shall be transmitted by the Secretary of the Board to the City Clerk within fourteen (14) days of the Board's meeting at which the Board took its final action.

Chapter 23E.92: U Unclassified District Provisions

4. The City Clerk shall schedule the matter on an agenda for a City Council meeting date that is within thirty (30) days of the Board's decision.
5. The Council may affirm, reverse or modify the decision of the Board. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.92.040 **Reserved**

Section 23E.92.050 **Reserved**

Section 23E.92.060 **Reserved**

Section 23E.92.070 **Development Standards**

All development standards shall be set forth in the Use Permit, including, but not limited to, lot size, density, building height, yards and building separations, lot coverage, Floor Area Ratio (FAR) and requirements for usable open space and off-street parking. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.92.080 **Reserved**

Section 23E.92.090 **Findings**

No Use Permit shall be granted under this District's provisions unless the Board, Commission and the Council make the finding under Section 23B.32.040. (Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.96: H Hillside Overlay District Provisions

Chapter 23E.96

H HILLSIDE OVERLAY DISTRICT PROVISIONS

Sections:

23E.96.010	Applicability of Regulations
23E.96.020	Purposes
23E.96.030	Uses Permitted
23E.96.040	Reserved
23E.96.050	Reserved
23E.96.060	Reserved
23E.96.070	Development Standards
23E.96.080	Reserved
23E.96.090	Findings
23E.96.100	Repealed by Ord. 6658-N.S.

Section 23E.96.010 Applicability of Regulations

The regulations in this chapter shall apply in all H Overlay Districts and which shall be combined with the underlying Districts as shown on the official Zoning Map. Construction of buildings shall also be subject to the building standards set forth in Ordinance No. 6128-N.S. or Chapter 19.68 of the BMC. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.020 Purposes

The purposes of the Hillside (H) Districts are to:

- A. Implement the Master Plan's policies regarding Hillside Development;
- B. Protect the character of Berkeley's hill Districts and their immediate environs;
- C. Give reasonable protection to views yet allow appropriate development of all property;
- D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.030 Uses Permitted

- A. Any use permitted in the underlying District which is combined with an H Overlay District, shall be allowed subject to obtaining a Use Permit when required in the underlying District, except as provided below:
- B. No multiple dwellings shall be permitted in any H District which is combined with any R-2 District. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.040 Reserved

Section 23E.96.050 Reserved

Section 23E.96.060 Reserved

Chapter 23E.96: H Hillside Overlay District Provisions

Section 23E.96.070 Development Standards

- A. Building height and yard setbacks in any combined H District shall be as set forth below. All other development standards, including but not limited to lot size, density, lot coverage, FAR, usable open space and off-street parking spaces, shall be as specified in the underlying Zoning District.
- B. The height for main and accessory buildings shall be limited as follows; provided, however, that the limits may be exceeded subject to obtaining an AUP and the required finding under Section 23E.96.090.B. In addition, building heights shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.020 and 23E.04.020, as the case may be.
 - 1. Main buildings shall be limited in average and maximum height, and in the number of stories in accordance with the following requirements:

<u>Underlying Zoning District</u>	Height limit average (ft.)		<u>Stories limit (number)</u>
	Avg	Max	
R-1, R-1A, R-2, R-2A	28	35	3
R-3, R-4, R-5, R-S, C-N, C-NS	35	35	3
All Residential Additions	See district standards or the highest portion of the roof, whichever is more restrictive	20	Not Applicable

- 2. Notwithstanding the definition of average height in Section 23F.04.010, for residential additions located above the lowest existing story that is partially or fully above grade, is not habitable, and projects beyond the footprint of the habitable portion of the building, the average height of such additions shall be measured from the floor plate of the lowest habitable story. However, the maximum height shall be measured from grade in all cases.
- 3. Accessory buildings shall be limited to 12 feet in average height and one story, provided, however, that increased height or stories may be allowed subject to obtaining an AUP and making the findings required under Sections 23D.08.010.B and 23E.96.090.B.
- C. Main buildings shall be set back from the respective lot lines, and separated between one another, as required by the regulations for the underlying District which is combined with the H District, except that such setbacks and building separations may be reduced subject to obtaining an AUP and making the required finding under Section 23E.96.090.B. In addition, yards and building separation shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.030 or 23E.04.030, as the case may be. (Ord. 7210-NS § 25, 2011: Ord. 6949-NS § 18 (part), 2006: Ord. 6848-NS § 16 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.080 Reserved

Section 23E.96.090 Findings

- A. No Use Permit shall be granted under the H District's provisions unless the Board or the Zoning Officer makes the finding under Section 23B.32.040.

Chapter 23E.96: H Hillside Overlay District Provisions

- B. In order for an Administrative Use Permit to be granted under Sections 23E.96.070.B or C, a finding shall be made that the height modification or the yard reduction is consistent with the purposes for the H District. (Ord. 6854-NS § 21 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.98: Civic Center District Overlay

Chapter 23E.98

CIVIC CENTER DISTRICT OVERLAY

Sections:

23E.98.010	Applicability of Regulations
23E.98.020	Purposes
23E.98.030	Uses Permitted
23E.98.040	Development Standards
23E.98.050	Definitions

Section 23E.98.010 Applicability of Regulations

The regulations in this Chapter apply to the area coterminous with the Civic Center Historic District designated under Chapter 3.24 and are applicable to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)
2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office) (Ord. 7370-NS § 1 (part), 2014)

Section 23E.98.020 Purposes

The general purpose of the overlay district is to implement General Plan Policy LU-22 Civic Center: "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities", as well as Downtown Area Plan Policy LU-1.4:

"Focus City government and civic activity in the Civic Center area, and recognize Downtown's central role in providing community services."

The specific purposes are to:

- A. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District.
- B. Allow a set of uses, which are civic in nature, and support active community use.
- C. Promote uses, which combined or individually will maintain public access to the historic buildings and resources.

Chapter 23E.98: Civic Center District Overlay

- D. Promote appropriate uses which respect the Civic Center’s historic significance in unifying the community and forming a link to Berkeley’s past.
- E. Promote the cultural and architectural heritage of the Civic Center.
- F. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities.
- G. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources. (Ord. 7370-NS § 1 (part), 2014)

Section 23E.98.030 Uses Permitted

The following table identifies all permitted uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH). All properties in the Civic Center District Overlay are restricted to only those uses listed below, regardless of uses permitted in the underlying zoning district.

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Libraries	UP(PH)	
Judicial Courts	AUP	
Museums	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Government Agencies and Institutions	AUP	
Public Schools/Educational Facilities	UP(PH)	
Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations	UP(PH)	
Live Performance Theatre	UP(PH)	
Public Market	UP (PH)	

(Ord. 7370-NS § 1 (part), 2014)

Section 23E.98.040 Development Standards

- A. All new buildings and additional Gross Floor Area within the Civic Center District Overlay shall be subject to a maximum building height of 50 feet.
- B. All new buildings, additional Gross Floor Area, or changes of use shall be subject to the parking, setback requirements and other development standards of the underlying District, in addition to the other applicable requirements of this Title. (Ord. 7370-NS § 1 (part), 2014)

Section 23E.98.050 Definitions

The following definitions are applicable only in the Civic Center District Overlay:

Live Performance Theatre: An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.

Chapter 23E.98: Civic Center District Overlay

Museum: A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.

Public Market: An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as 75% or more of retail space is devoted to the sale of General or Specialized food products and no more than 25% of retail space is devoted to one or more of the following Incidental Uses: owner operated and/or independent Food Service Establishment selling food from local and regional producers and sales of Retail Products from local and regional produce. (Ord. 7635-NS § 25, 2019; Ord. 7370-NS § 1 (part), 2014)

Sub-Title 23F

DEFINITIONS

Chapters:

23F.04 DEFINITIONS

Chapter 23F.04: Definitions

Chapter 23F.04

DEFINITIONS

Sections:

23F.04.010 Definitions

Section 23F.04.010 Definitions

For the purposes of this chapter certain terms used herein are defined as follows:

Accessory Building: See **Building, Accessory.**

Accessory Dwelling Unit: A secondary Dwelling Unit that is located on a lot which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Accessory Structure: See **Structure, Accessory.**

Accessory Use: See **Use, Accessory.**

Addition: The creation of any new portion of a building which results in a vertical or horizontal extension of the building, or results in any new gross floor area that was not present in the building prior to construction of the addition. The creation of a mezzanine or loft, or a conversion of a previously unused attic or underfloor space to usable floor area, shall be considered an addition for the purposes of this chapter.

Addition, Residential: The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15% of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area shall not include additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell, making previously unusable attics into habitable floor area (except where new areas with vertical clearance of six feet or greater are created through expansions of the building shell), excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.

Addition, Major Residential: A residential addition greater than 15% of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of (1) additions that are entirely subsumed within previously existing floor area and (2) the floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition. Any new floor shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15% of the lot area or 600 square feet, whichever is less.

Chapter 23F.04: Definitions

Adult-oriented Business: Any business operated at a fixed location by whatever name, which appeals to prurient interests, sexual titillations, appetites, fantasies or curiosities. Such an adult-oriented business shall include, but not be limited to, those businesses:

1. Which predominantly exhibit, offer for sale or engage in the sale or distribution of publications, personal services, films, videotapes, devices, products or materials, which appeal to a prurient interest or sexual appetite of the purchases or user;
2. Which engage in the showing of motion pictures or videotapes in which sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or any other form of sexual gratification, is the primary and recurring theme;
3. Which engage in the presentation of live adult entertainment in which the actors or performers simulate or engage in sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or suggestive body movements connoting such acts, with or without another actor, patron or spectator, such showing appealing to a prurient interest or sexual appetite of the spectator;
4. Which engage in massage service, except when rendered in conjunction with professional services provided by the following persons holding unrevoked licenses or certificates:
 - a. Chiropractors governed under provisions of California State Law;
 - b. Medical practitioners practicing under the provisions of the California State Medical Practice Act;
 - c. Physical therapists practicing under the provisions of the California Physical Therapy Practice Act;
 - d. Nurses practicing under the provisions of the California Nursing Practice Act or the California Vocational Nursing Practice Act;
 - e. Psychologists practicing under the provisions of the California Psychology Licensing Law;
 - f. Osteopaths practicing under the provisions of the California Osteopathic Act;
 - g. Persons working under the direct and immediate supervision of any persons certified as set forth in Sections a-f above.
5. Which provide dating or escort services;
6. Which specialize in providing models who pose for photographing, drawing or other representative renditions, which modeling appeals to a prurient interest or sexual appetite;
7. Which engage in encounter, rap or counseling services which appeal to a prurient interest or sexual appetite;
8. Which engage in providing nude, bottomless or topless dance partners;
9. Which use nude, bottomless or topless entertainers, or use nude, bottomless or topless employees to attend to or service tables, bars or patrons or which allow nude, bottomless or topless entertainers or employees to be seen by members of the public or patrons of the business;
10. Which engage in providing sauna baths, water baths, showers, steam rooms or steam baths or any other body cleansing or toning arrangement wherein an attendant, clothed or nude, accompanies the customer for the purpose of talking, touching or appealing to the customer's prurient interest or sexual appetite; or

Chapter 23F.04: Definitions

11. Which engage in the reading of, or providing of tapes or records for listening to, erotic literature which appeals to the prurient interest or sexual fantasies of customers.

Alcoholic Beverage Sales: The retail sale of beverages containing alcohol for off-site consumption subject to regulation by the State Department of Alcoholic Beverage Control (ABC) as an off-sale establishment.

Alcoholic Beverage Service: The retail sale of beverages containing alcohol for on-site consumption subject to regulation by the ABC as an on-sale establishment.

Alley: A public right-of-way which affords only a secondary means of access for vehicles to any abutting property.

Alteration: See **Structural Alteration**.

Alternative Fuel: As defined by the Energy Policy Act, Methanol, denatured ethanol, and other alcohols; mixtures containing 85% or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; non-alcohol fuels (such as biodiesel) derived from biological material; and electricity.

Alternative Fuel/Charge Station: Any establishment that dispenses alternative fuel.

Ancillary Use: See **Use, Ancillary**.

Antenna: Any system of wires, poles, rods, panels, whips, cylinders, reflecting discs, or similar devices used for transmitting or receiving electromagnetic waves when such system is either external to or attached to the exterior of a structure, or is portable or movable. "Antenna" includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

Antenna - Facade Mounted (also known as Building Mounted): Any antenna, directly attached or affixed to the elevation of a building, tank, tower, or other structure.

Antenna - Ground Mounted: Any antenna with its base, whether consisting of single or multiple posts, placed directly on the ground or a single mast less than 15 feet tall and 6 inches in diameter.

Antenna - Parabolic (also known as Satellite Dish Antenna): Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit or receive electromagnetic or radio frequency communication/signals in a specific directional pattern.

Amusement Device: Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

Amusement Device Arcade: An establishment which contains six (6) or more Amusement Devices. An Amusement Device Arcade is a Commercial Recreation Center irrespective of whether such machines are the principal commercial activity of an establishment.

Appliance Store: A store engaged in the retail sales of appliances for household uses which fall into one of the following categories:

Major Appliance: An electrical appliance usually too large to be carried by one adult, designed to sit on the floor or be built into an interior wall, including, but not limited to, washing and drying machines, ranges, ovens, refrigerators and freezers.

Chapter 23F.04: Definitions

Small Appliance: An electrical machine which usually can be carried by an adult, intended for household use.

Appraiser, Certified: A person certified by the State of California Office of Real Estate Appraisers to estimate the value of a particular real property.

Approved Engineer: Radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies approved by City of Berkeley staff to conduct analysis required pursuant to this chapter.

Art/Craft Studio: An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district's requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances.

Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.

The use of computers in an activity does not by itself preclude its classification as an Art/Craft Studio.

This definition does not include architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.

Artist Studio: A detached accessory building, used by residents of a main dwelling Unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.

Attic: The area located between the ceiling of the top story of a building and the building's roof and not usable as habitable or commercial space.

Automatic Teller Machine (ATM): An unstaffed machine which processes deposits, withdrawals and transfers of funds of customers of a bank, credit union, savings and loan association or other financial service or network.

Automobile Parts Store: An establishment that sells automobile, truck or other vehicle parts or equipment.

Automobile Repair and Service: An establishment that repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles on its premises.

Automobile Rentals: An establishment which rents automobiles, trucks, motorcycles, boats or other motor driven vehicles that are stored either indoors or outdoors on its premises.

Automobile Sales: An establishment which sells, or leases long-term, new, used or pre-owned automobiles or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline). Ancillary uses and services that are supporting of an automobile sales use may include the sale and installation of automobile parts, accessories and equipment; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes.

Automobile Used Car Establishment: An establishment which sells automobiles and/or trucks of which more than fifty percent (50%) at any time are previously owned and/or used.

Automobile Use: Any commercial establishment which sells, rents, repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles (excepting motorcycles) on the premises.

Chapter 23F.04: Definitions

Automobile Wrecking Establishment: An establishment which engages in the on-site dismantling or wrecking of automobiles, trucks or trailers for the purpose of obtaining parts, metal or materials for re-use or resale or the storage and keeping of such dismantled parts.

Bakery: An establishment which engages primarily in the sale of breads or other baked goods, whether baked on-site or at another location. A bakery as defined herein shall not be considered a food service establishment if: (1) no customer seating or other physical accommodations for on-site dining are provided; and (2) the breads and baked goods are not packaged for immediate consumption. Any establishment whose breads and baked goods are predominantly sold at retail from a different location or locations shall be deemed a wholesale and/or manufacturing use, subject to the regulations of the district in which it is located.

Balcony: A horizontal platform extending from the exterior wall of a building, accessible from the building's interior, and not directly accessible from the ground. A balcony is typically not covered by a roof or building overhang or enclosed on more than two (2) sides by walls. However, railings shall not be considered enclosures.

Basement: The lowest usable space of a building, between the floor and the ceiling, for non-habitable use such as, but not limited to, garage or storage use. If the ceiling in any portion of a basement is more than six (6) feet above the existing grade at any point the basement will be considered a story for building height purposes.

Bay Window: A portion of a building cantilevered so as to project out from a wall and containing windows which cover at least 50% of the projection's surface. A bay window which projects into a required yard shall not exceed 25% of the length of the wall.

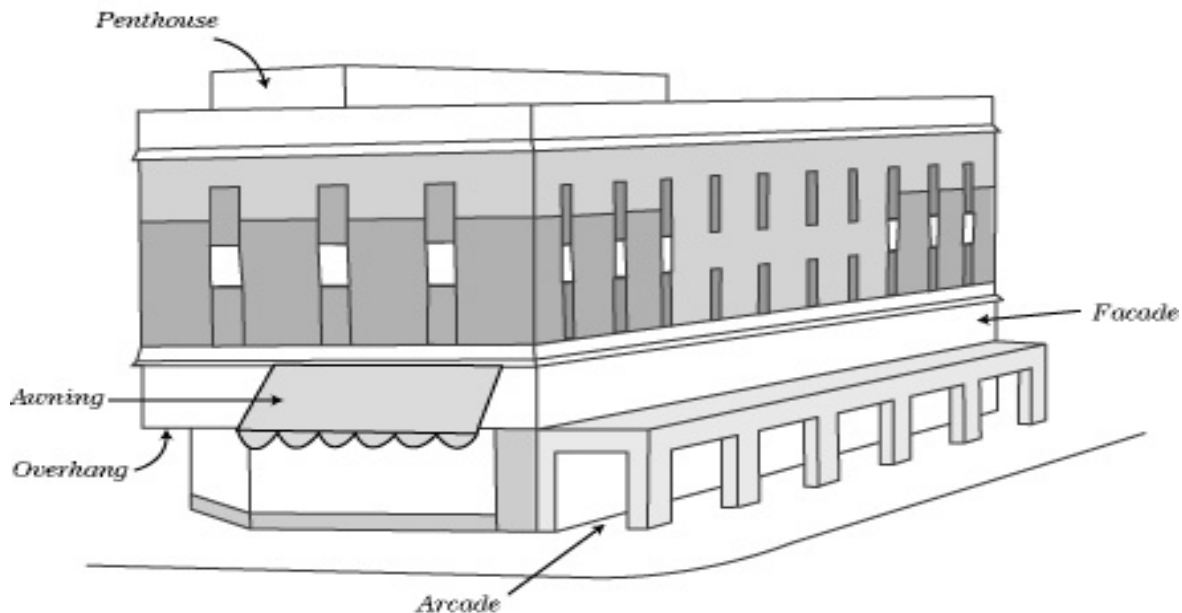
Bed and Breakfast Establishment: A single residential property containing no more than a total of three sleeping rooms or dwelling units that are offered for rent at any given time, which is the primary residence of the owner and in which rooms or units are rented out to persons who occupy them for periods not exceeding 14 days in any month. For purposes of this ordinance, bed and breakfast establishments shall be regulated in the same manner as Tourist Hotels. Bed and breakfast establishments may be referred to in this title as "B&Bs".

Bingo Parlor: Any facility engaged in bingo gaming as defined by BMC Chapter 9.18.

Block: An area designated on an official map of the City, which is bounded on all sides by the public right-of-way, a railroad right-of-way, private streets or a boundary line of unsubdivided acreage or any combination thereof.

Boarding House: A building used for residential purposes, other than a hotel, where lodging and meals for five or more persons, who are not living as a household, are provided for compensation, whether direct or indirect. In determining the number of persons lodging in a boarding house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent (also see **Rooming House**).

(Figure 1 Commercial Building)



Building: Any enclosed structure having a roof and supported by columns or walls.

Accessory Building: A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

Main Building: A building which is designed for, or in which is conducted, the principal use of the lot on which it is situated. In any R District any dwelling, except an accessory dwelling unit as defined in this subtitle, shall be deemed to be a main building on the lot.

Building Site Area: Same as lot area.

Business Activity: Any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.

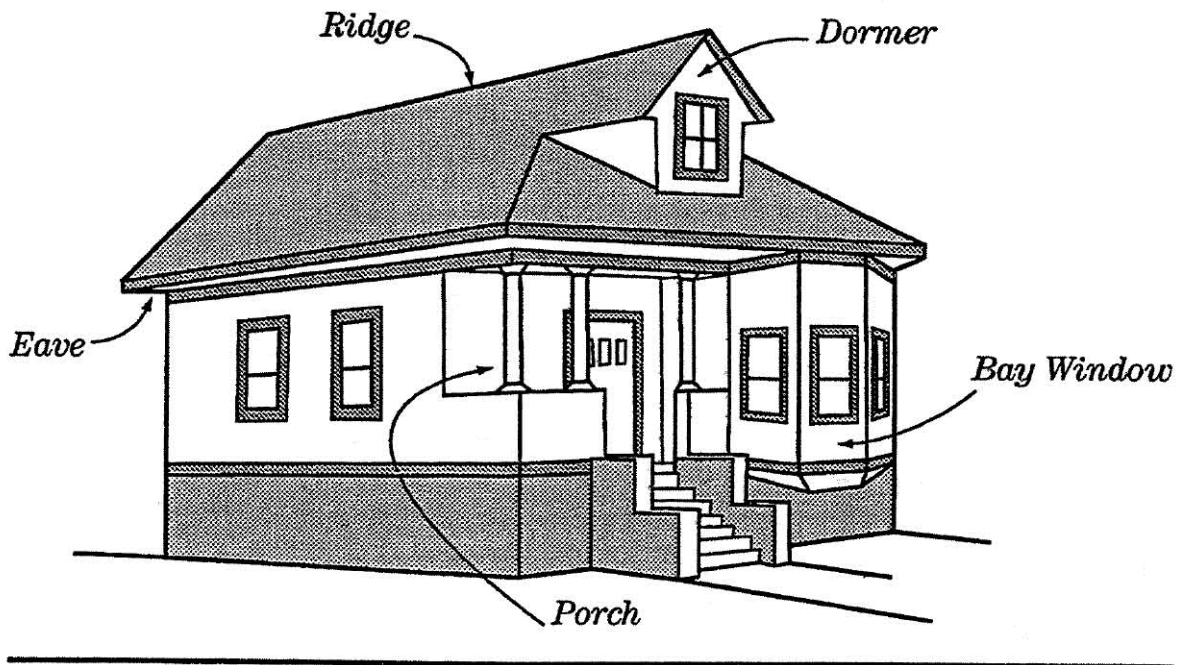
Business Support Service: Permitted services: photocopying, desktop publishing, microfilm recording, slide duplicating, bulk mailing, parcel shipping, parcel labeling, packaging, messenger and delivery/courier, sign painting, lettering and building maintenance.

Cafeteria, Employee or Resident: A food service establishment intended primarily for use by employees or residents working or living at the same location, or for use by patients and/or visitors and restricted from use by the general public.

Cannabis Uses: Cannabis uses include retail sales, cultivation, manufacturing, testing, and distributing. See BMC Chapters 12.21, and 12.22 for cannabis regulations and Section 23C.25 for land use regulations.

Carport: A roofed structure for one or more automobiles which is enclosed by not more than two (2) walls. A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer in order to be used for one or more legal parking spaces required under this chapter.

(Figure 2 Residential Building)



Chair Massage: Massage given in a public, open setting to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool, or office seat, wheelchair, or other chair-like device.

Change of Use: Any change in the nature or character of the use of a building or structure. A residential change of use includes, but is not limited to, the elimination of any dwelling unit, the reduction in the floor area or habitability of a dwelling unit, or the reduction in the floor area or habitability of bedroom or sleeping quarters in a group living accommodation or residential hotel, when a new use is to replace a previous use. A residential change of use does not include the establishment of a home occupation in compliance with this chapter. A commercial change of use includes a change to a different category of commercial or manufacturing use, but does not include changes between uses that are classified in the same category of commercial or manufacturing use.

Charitable Use: A use that is conducted by a charitable institution, organization or association organized for charitable purposes and conducted for charitable purposes only, as defined under state or federal tax laws.

Child Care Center or Facility: An establishment providing daycare for children, other than a Family Daycare Home, which is licensed by the State of California Department of Social Services.

Church: See **Religious Assembly Use.**

Clothing Store: Any store selling clothing, including, but not limited to, apparel, hats, shoes, accessories, outerwear, underwear, nightclothes, ties, belts, scarves or other articles of attire. A shop which sells primarily T-shirts and/or sweatshirts with imprinted words or images shall not be construed as a clothing store but rather as a gift/novelty shop.

Club: A group of persons organized for a purpose to pursue common goals, activities or interests, usually characterized by certain membership qualifications, payment of fees or dues, regular meetings and a constitution or by-laws. A building or area used by such a group shall be considered a club.

Chapter 23F.04: Definitions

Co-housing Communities: Types of residential development which foster community, as defined in BMC Section 21.28.030.

Co-Location: Location of any telecommunication facility owned or operated by a different telecommunication service provider on the same tower, building, or property.

Columbaria: A structure of vaults lined with recesses for cinerary urns or storage of cinerary remains.

Commercial Recreation Center: Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This may include, but is not limited to, bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses and amusement device arcades.

Commercial Use: The categories of commercial uses of a property include retail products store, personal/household service, food service establishment, entertainment establishment, office, tourist hotel, automobile uses, live/work units, mixed use development, wholesale use, parking lot and any use listed as a sub-category of the above uses; or any other use determined to be a business activity (except home occupations), as these terms are defined in this sub-title.

Community Care Facility: Any facility, place or building where non-medical care and supervision of children, adolescents, adults or elderly persons is conducted under license from the California State Department of Social Services (SDSS), but not including medical care institutions, skilled nursing facilities, nursing homes, foster homes, Family Daycare Homes, child care facilities or transitional housing.

Community and Institutional Use: The categories of Community and Institutional Uses of a property including, but not limited to, Religious Assembly Uses, Clubs/Lodges, Community Centers, Hospitals, Schools, Public Uses and Utility Uses, as these terms are defined in this Sub-title.

Condition: A requirement attached to a Permit or entitlement, the satisfaction of which is necessary for the validity and effectiveness of the Permit or entitlement.

Condominium: An estate in real property consisting of an undivided interest-in-common in a portion of a lot of real property together with a separate interest in space in a residential, industrial or commercial building on such real property such as an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of such real property.

Confronting Lot: A lot whose front property line is intersected by a line perpendicular to and intersecting the front property line of the subject lot.

Controlled Rental Unit: Any dwelling unit, Live/Work Unit, bedroom or sleeping quarters portion of a Group Living Accommodation or other unit that is subject to the City's Rent Stabilization Ordinance (BMC Chapter 13.76).

Construction: The placing of construction materials and their fastening in a permanent manner to the ground or a structure or building for the purpose of creating or altering a structure or building, or excavation of a basement.

Contractor: Any person who contracts to undertake and complete a construction project or a discrete part thereof, including all persons defined as contractors and subject to Division 3, Chapter 9 of the State of California Business and Professions Code.

Convalescent Hospital: See **Nursing Home**.

Conversion, Commercial: The physical change of a building's walls separating lease spaces so as to change (1) the number of separate, individual commercial lease spaces for commercial businesses, or (2) the number of square feet of leasable floor area of any lease space.

Chapter 23F.04: Definitions

Conversion, Residential: The physical change of the floor area and/or walls of a building that is used for dwelling unit, Group Living Accommodation or Residential Hotel Room purposes, so as to change the number of dwelling units, sleeping rooms or Residential Hotel Rooms, or reduce the floor area and/or habitable space of any residential living quarters.

County: The County of Alameda.

Coverage Area: All the area of a lot, as projected on a horizontal plane, which is enclosed by the exterior walls of buildings or enclosed Accessory Structures; or covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area. Also see Section 23D.04.040.

Craft: An occupation, avocation or trade requiring special manual dexterity or artistic skill in the creation of a product.

Dance, Exercise, Martial Arts or Music Studio: An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.

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.

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 Section, destroyed in part means when 50% or more of the enclosing exterior walls and 50% or more of the roof are removed. Removal of facades or portions of facades is subject to Chapter 23E.12.

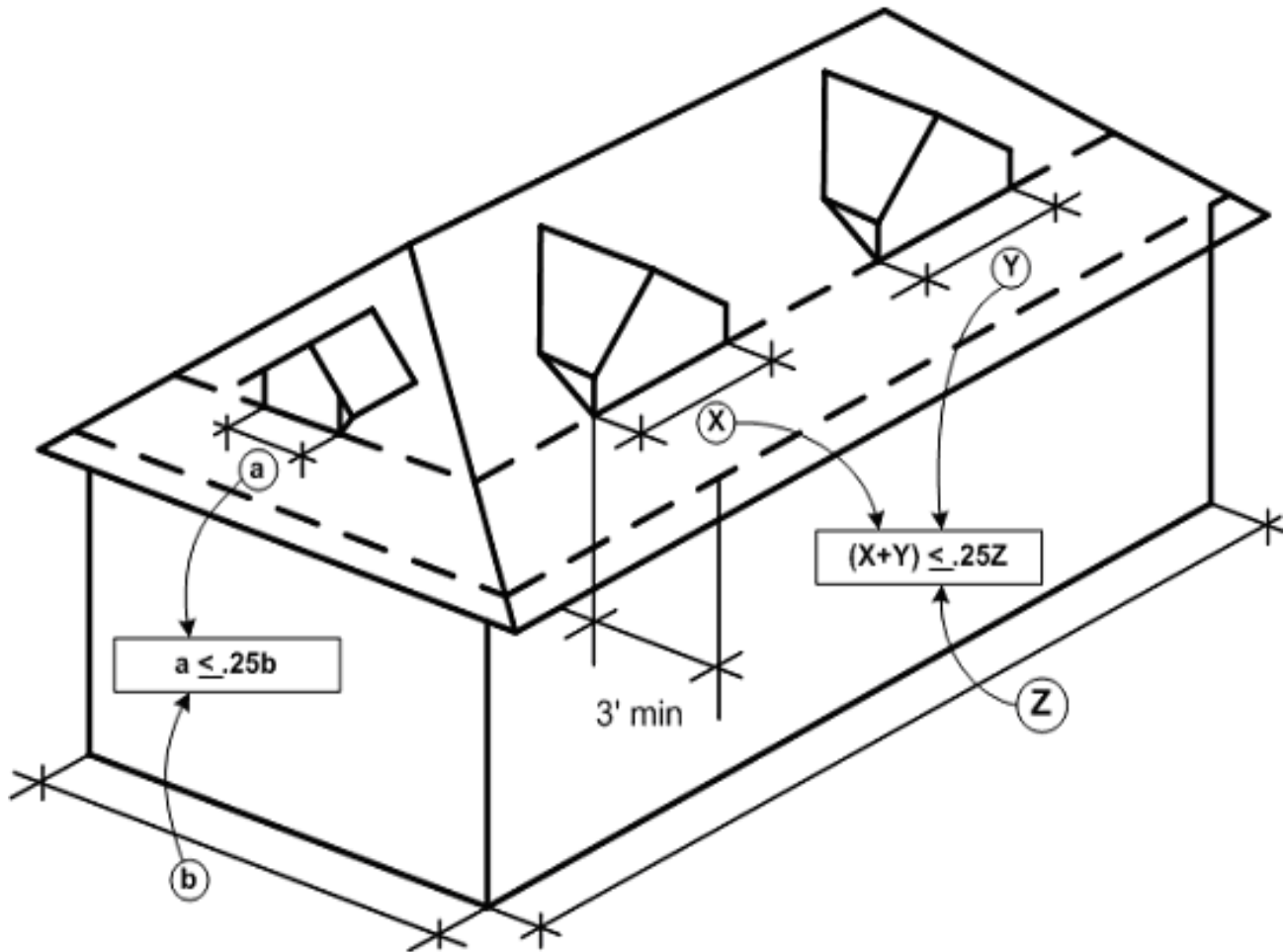
Density Bonus: An increase in the number of units authorized for a particular lot of land beyond the maximum otherwise allowed by the Master Plan or this chapter.

Department: The Planning and Development Department of the City of Berkeley or its successor administrative unit.

Department Store: A Retail Products 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.

Dormer: A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. All features of a dormer shall be set back a minimum of three feet from the exterior of the wall below, with the exception of the dormer's eaves, which may project horizontally not more than two feet from the exterior face of the dormer. A dormer must be below the ridge of the portion of the building's roof where the dormer is located. The total horizontal dimension of the dormer(s) facing a given side of a building, as measured parallel to that side, shall not exceed 25% of the length of the exterior wall(s), as shown in Figure 3B. Dormers meeting this definition shall not be calculated in the Average Height of Building.

(Figure 3B)



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.

Drive-in Use: 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 including, but not limited to, drive-through food, Financial Services and automatic carwashes.

Driveway: A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.

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.

Dry Cleaning and Laundry Agent: A service business use in which clothes are deposited by a customer to be dry cleaned or laundered at another location. Such agents may also engage in clothing repairs, alterations, pressing and/or ironing.

Dry Cleaning/Laundry Plant: 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; including all establishments subject to Section 19233 of the State of

Chapter 23F.04: Definitions

California Business and Professions Code, regulating Dry Cleaning Plants, but not including Laundromats, as defined in this Chapter.

Duplex: A building or use of a lot designed for, or occupied exclusively by, two (2) households.

Dwelling Unit: A building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

Dwelling Use, Multiple: See **Multiple Dwelling Use**.

Emergency Shelters (from Health and Safety Code Section 50801(e)): Temporary lodging for homeless persons with minimal supportive services that may be limited to occupancy of six months or less.

Emergency Use Permit: A Permit issued by the City Council during a declared emergency, for the establishment of a Use or the construction of a structure, that is required to ameliorate the effects of the emergency.

Enhanced Transit Service: Enhanced transit service includes any facility that will result in the improved operational performance of bus and/or shuttle service, as well as improvements that will encourage the use of transit and make transit service more compatible with downtown's activities and appearance. Improvements for enhanced transit services include but are not limited to: "complete streets" to enhance pedestrian and bicycle routes to transit; transit signal priority; queue jump lanes and left turn signal phasing; bus shelters and raised bus platforms; bus curb extensions and concrete bus pads; transit pre-pay fare vending machines; bus layover facilities; transit plazas and bus stop amenities; bicycle parking and bicycle rental facilities near transit; and street improvements that mitigate the impact of transit operations on pedestrians and bicyclists.

Entertainment Establishment: A permanent establishment which includes live performances and/or patron dancing, including but not limited to, cabarets, nightclubs, dance halls or discotheques.

Facade: Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.

Family: See **Household**.

Family Daycare Home: A facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family daycare home or a small family daycare home as licensed by the State of California. Includes Small Family Daycare Home and Large Family Daycare Home.

Small Family Daycare Home: The use of a dwelling for eight (8) or fewer children, including children under 10 years of age who reside at the home, as set forth by the State of California.

Large Family Daycare Home: The use of a dwelling for nine (9) to fourteen (14) children, including children under 10 years of age who reside at the home, as set forth by the State of California.

Fence: A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a Hedge, which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.

Financial Services, Retail: An office, open to the public, offering teller or counter financial services including either cash, checking and/or savings account transactions or some combination thereof, including, but not limited to, banks, savings and loans and credit unions offering such services at that location. Financial Services, Retail, shall not include "Non-Chartered Financial Institutions."

Firearm/Munitions Business: Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance or other firearm or firearm parts or supplies.

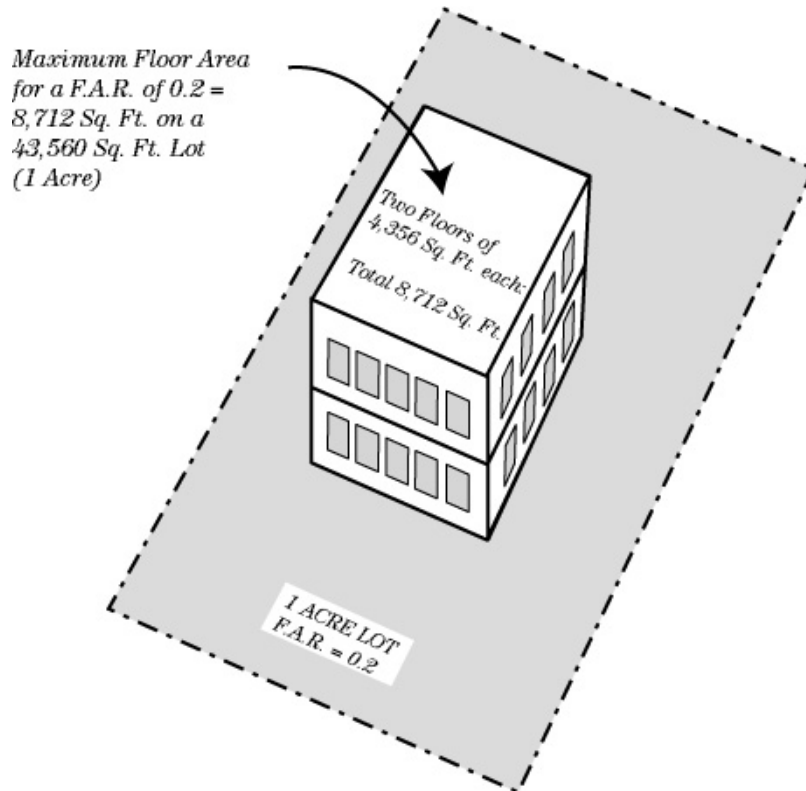
Chapter 23F.04: Definitions

Floor Area, Gross: The total gross horizontal areas of all floors of a building or enclosed structure, including, but not limited to, usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings (or the centerlines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two (2) feet within the roof line of any building or portion thereof without walls, except that in the case of a multi-story building which has covered or enclosed stairways, stairwells and elevator shafts, the horizontal area of such features shall be counted only once at the floor level of their greatest area of horizontal extent. Areas that shall be excluded from gross floor area shall include covered or uncovered areas used for off-street parking spaces or loading spaces and driveways, ramps between floors of a multi-level parking garage and maneuvering aisles relating thereto; mechanical, electrical and telephone equipment rooms below Finish Grade; and areas which qualify as usable open space. For non-residential uses, Gross Floor Area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight; but excludes arcades, porticoes and similar open areas which are located at or near street level, which are accessible to the general public and which are not designed or used as sales, display, storage, service or production areas.

Floor Area, Leasable: The total interior floor area of a commercial lease space available for use by a single business including all sales, customer, display, shelving, assembly, seating, counter, kitchen, storage and office areas but not including stairs, restrooms and unenclosed walkways and those areas serving more than one lease space, including, but not limited to, common hallways, corridors, lobbies, maintenance areas, vestibules and other common areas.

Floor Area Ratio (FAR): The quotient resulting from division of the Gross Floor Area of all buildings on a lot by the area of the lot. In a single integrated development on contiguous lots, the permitted Floor Area Ratio shall be computed upon the basis of the total area of all such lots.

Figure 3 Floor Area Ratio (FAR)



$$\text{FAR} = \text{Total Building Floor Area} \div \text{Total Lot Area}$$

Chapter 23F.04: Definitions

Food Products Store: A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.

Food Products Store, General: An establishment, selling a range of foods including fresh, frozen or canned meats, fish and poultry, fruits and vegetables, bread and/or grain products and dairy products, including, but not limited to, grocery stores, markets, or supermarkets; or produce stores, cheese, uncooked meat/butcher shops and fish markets.

Food Products Store, Specialized: An establishment, other than a Food Products Store, General, selling a limited range of foods, other than fresh produce, meats, cheese or fish. This includes, but is not limited to, stores selling cooked or sandwich meats, fresh pasta, spices and herbs, coffees/teas and candies/confectioneries.

Food Service Establishment: An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises. The categories of Food Service Establishment are:

Carry Out Food Store: A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. A Carry Out Food Store is usually characterized as an establishment which: serves food altered in texture and/or temperature on a customer-demand basis; puts such food in non-sealed packages or edible containers; requires payment for such food prior to consumption; and provides no seating or other physical accommodations for on-premises dining. Examples of this type of facility include, but are not limited to, delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. A Bakery or Food Products Store is not considered a Carry Out Food Store.

Quick Service Restaurant: An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. A Quick Service Restaurant is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required prior to consumption, and seating or other physical accommodations for on-premises customer dining, with limited or no table service (no waiters or waitresses), is provided. Examples of this type of facility may include, but are not limited to, establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken or fish and chips.

Full Service Restaurant: An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. A Full Service Restaurant is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters or waitresses).

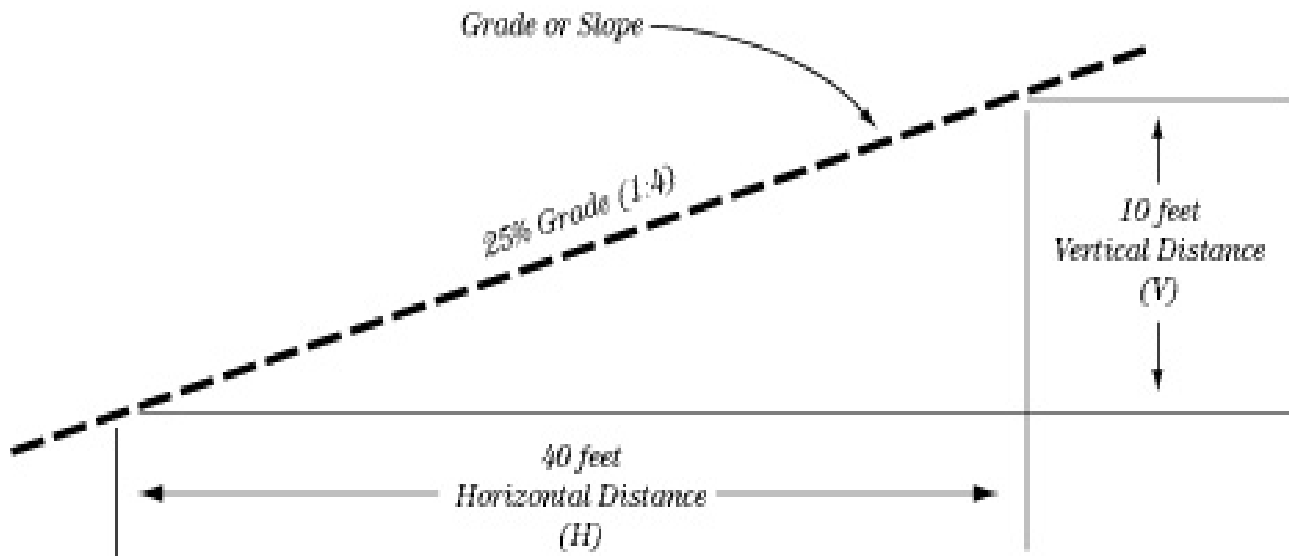
Foster Home: A home, licensed by the Alameda County Social Services Agency, in which twenty-four (24) hour, non-medical care and supervision are provided in a family setting in the licensee's family residence, for not more than six (6) foster children exclusive of the licensee's family. Such use shall be considered a Residential Use of the property for the purposes of this chapter.

Fraternity House: A building used for Group Living Accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.

Front Wall: The wall of the building nearest the front property line.

Garage, Residential: A detached Accessory Structure or portion of a primary building, covered or roofed and enclosed on at least three (3) sides with walls, used for off-street parking by members of the Households residing on the premises.

(Figure 4 Grade or Slope)



Gasoline/Automobile Fuel Station: Any establishment dispensing motor vehicle fuel from storage tanks, pipes, compressors, batteries or electrical transmission facilities, into vehicles including, but not limited to, gasoline, diesel fuel, Gasohol, hydrogen, compressed natural gas, electricity or any combination thereof.

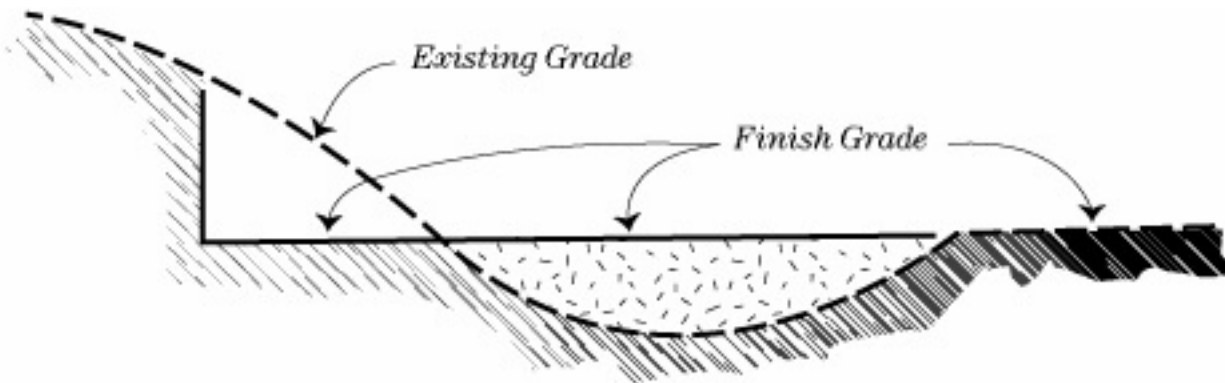
Gift/Novelty Shop: A store selling small manufactured articles usually for personal use or household adornment, including, but not limited to, stores selling primarily T-shirts and/or sweatshirts with imprinted wording or images.

Grade: The location of ground surface.

Existing Grade: The elevation of the ground at any point on a lot as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. See Figure 5.

Finish Grade: The lowest point of elevation of the finished surface of the ground between the exterior walls of a building and a point five (5) feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five (5) feet distant from said wall. In the case of walls which are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. See Figure 5.

(Figure 5 Grade, Existing and Finish)



Chapter 23F.04: Definitions

Group Living Accommodations: A building or portion of a building designed for or accommodating Residential Use by persons not living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels.

Ground Floor Street Frontage: The occupied floor space in a structure nearest to the public right-of-way and closest to sidewalk grade.

Guest House: An Accessory Building used for temporary living accommodations by guests of the occupants of a dwelling unit on the same lot which does not have kitchen or cooking facilities and which is not rented or subject to any compensation or charge, or otherwise used as a dwelling unit.

Habitable Space: A space in a building which is used or designed to be used for living, sleeping, eating or cooking, but not including garages, bathrooms, utility, storage and laundry rooms, halls or closets.

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

Height of Building, Average: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate; in the case of a roof with parapet walls, to the top of the parapet wall; in the case of a gambrel roof the average height of the roof between the ridge and the point where the uppermost change in the roof's slope occurs; in the case of a mansard roof, to the height of the deck; and in the case of a shed roof, to the height of the roof ridge. Dormers, as defined in this subsection, shall not be included in the average height calculation.

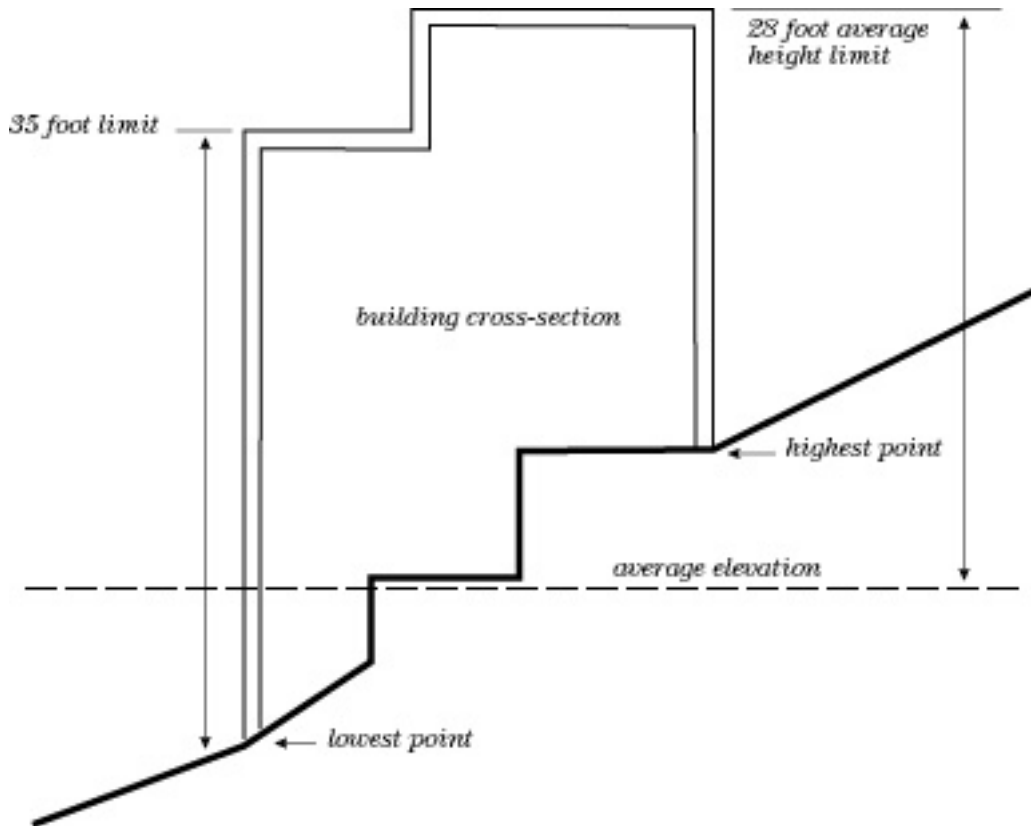
Height of Building, Maximum: The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls. See Figure 6.

Hobby Shop: A store selling items related to one or more hobbies, including but not limited to, coins, stamps or models.

Home Occupation: A business use conducted on property developed with Residential use, which is incidental and secondary to the Residential use, does not change the residential character thereof, 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.

(Figure 6 Base Elevation Calculation)



Hospital: A facility for in-patient medical care, which is licensed under the provisions of the California Administrative Code, Title 17, Section 237 or 238 or amendments thereto.

Hostel: See **Hotel, Tourist**.

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.

Hotel, Tourist: A building composed of Tourist Hotel Rooms. Buildings containing Residential Hotel Rooms shall be deemed as Residential Hotels.

Hotel, Residential: A building which provides rooms for rent for residential purposes, including Single Residential Occupancy (SRO) Hotels. Residential Hotels are a type of Group Living Accommodation.

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.

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 shall be 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

Chapter 23F.04: Definitions

percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:

Low Income Household: A Household whose gross income is greater than eighty percent (80%) and less than one hundred percent (100%) of the median income.

Lower Income Household: A Household whose income is no greater than eighty percent (80%) and above fifty percent (50%) of the median income.

Very Low Income Household: A Household whose gross income is fifty percent (50%) or less of the median income.

Incidental Use: See **Use, Incidental.**

Inclusionary Unit: A dwelling unit which is affordable by Households with income below the Oakland PMSA median income; or in the case of Limited Equity Cooperatives, Households with income below one hundred twenty percent (120%) of the Oakland PMSA median income.

Kitchen: A habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.

Landscaped Area: An area of ground within the boundaries of a lot which consists of living plant material including, but not limited to, trees, shrubs, ground covers, grass, flowers, gardens and vines. A landscaped area shall not include off-street parking spaces, driveways, paved walkways and paths, patios and other surfaces covered by concrete or asphalt.

Lattice Tower: A support structure, erected on the ground that consists of metal crossed strips or bars to support antennas and related equipment.

Laundry Agent or Plant: See **Dry Cleaning and Laundry Agent** or **Dry Cleaning/Laundry Plant.**

Laundromat: A business which offers self-service laundry and/or dry-cleaning machines and dryers, which are coin, token or otherwise fee operated.

Limited Equity Cooperative: The form of ownership defined in Section 11003.4(a) of the Business and Professions Code or other form of ownership, wherein appreciation of equity of dwelling units is no greater than appreciation permitted by California Health and Safety Code Section 33007.5 for a Limited Equity Cooperative.

Live/Work Unit: A built space used or designed to be used both as a workplace and as a residence by one (1) or more persons. Each and every Live/Work Unit shall provide all of the following:

1. A cooking space and sanitary facility in conformance with applicable building standards adopted by the City;
2. Adequate and clearly defined working space constituting no less than sixty percent (60%) (no less than fifty percent (50%) in units created by Change of Use from a dwelling unit) of the Gross Floor Area of the Live/Work Unit. Said working space shall be reserved for and regularly used by one (1) or more persons residing there. Such workspace shall also be consistent with City administrative guidelines for live/work design. If the workspace is less than sixty percent (60%), [less than fifty percent (50%) in units created by change of use from a dwelling unit], the unit shall be considered to be a dwelling unit and be subject to all requirements applicable to dwelling units.

Loading Space, Off-street: A covered or uncovered space for trucks or other delivery vehicles for the loading or unloading of freight, cargo, packages, containers or bundles of goods and/or bulky goods.

Lodge: See **Club.**

Chapter 23F.04: Definitions

Loft: See **Mezzanine**.

Lot: A separate legal subdivision of land, as recorded with the County of Alameda Recorder. Lots are categorized as follows:

Abutting Lot: A lot having a common property line or separated by a public path or alley, private street or easement to the subject lot.

Corner Lot: A lot bounded on two or more adjacent sides by street lines, providing that the angle of intersection is less than one hundred thirty-five (135) degrees.

Flag Lot: A lot so shaped that the main portion of the lot area does not have direct street frontage, other than by a connection of a strip of land which is used for access purposes.

Interior Lot: A lot bounded on one (1) side by a street line and on all other sides by lot lines between adjacent lots or is bounded by more than one (1) street with an intersection greater than or equal to one hundred thirty-five (135) degrees.

Key Lot: Any interior lot which abuts the rear lot line of a corner lot.

Receiving Lot: The lot to which a building is relocated from a different lot.

Source Lot: The lot from which a building is relocated to a different lot.

Through Lot: A lot having frontage on two (2) parallel or approximately parallel streets.

Lot Area: The total horizontal area within a lot's boundary lines.

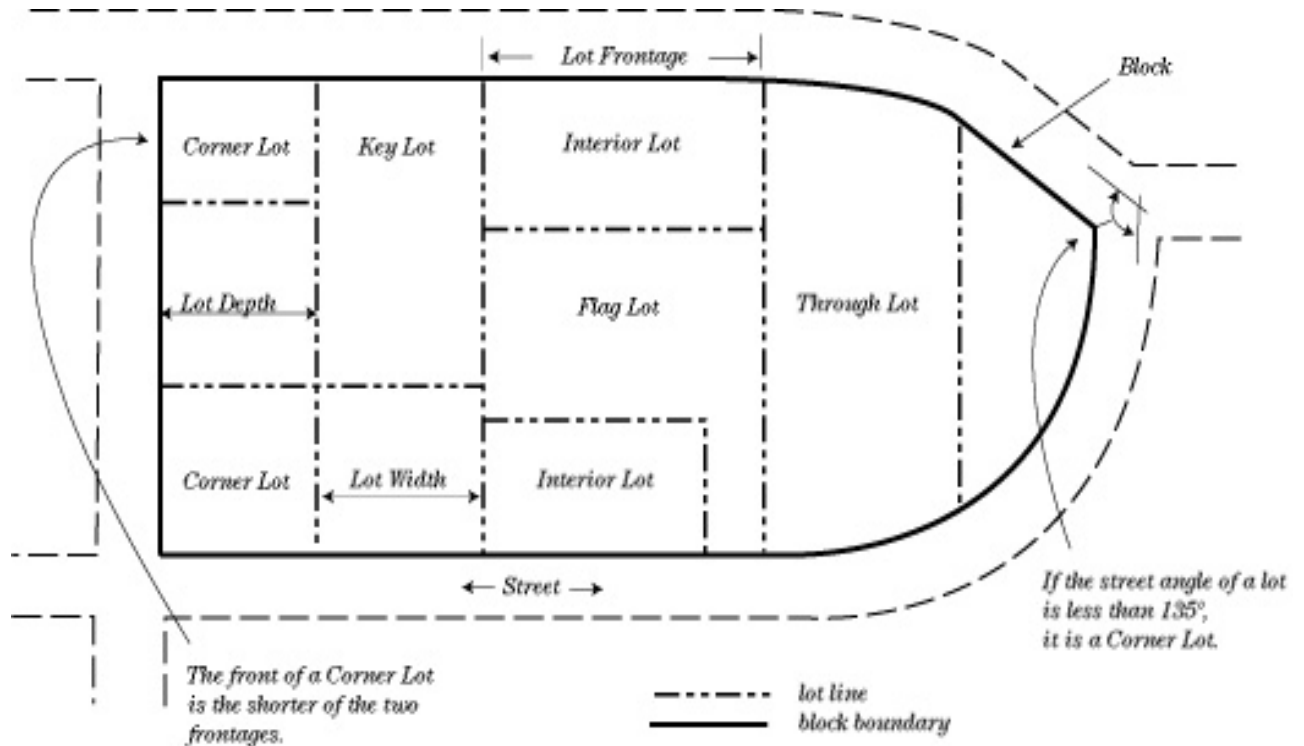
Lot Depth: The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.

Lot Frontage: That dimension of a lot's front lot line abutting on a street.

Lot Lines: The boundaries between a lot and other property or the public right-of-way.

Lot Width: The average distance between the side lot lines measured at right angles to the lot depth.

(Figure 7 Lot Configuration)



Main Building: See **Building, Main**.

Maintenance of Building: Those activities which preserve an existing building including, but not limited to cleaning, painting, refurbishing (but not altering) exterior and interior walls, equipment, facilities and fixtures.

Manufactured Home: A structure, designed or altered to be used as a dwelling unit, which is transportable in one (1) or more sections and is built on a frame or chassis to which wheels may be attached so as to be transported, including mobile homes meeting the standards of the National Manufactured Housing Construction and Safety Act of 1974. If a Manufactured Home is mounted on a permanent foundation and connected to all utilities required for a dwelling unit built on the site, it is considered a dwelling unit.

Manufacturing Use: Primarily engaged in the mechanical or the chemical transformation of materials or substances into new products. Manufacturing activities include, but are not limited to, assembly, baking, brewing, fabrication, milling, processing, refining, smelting and treatment and any other uses determined by the Zoning Officer. Except as otherwise provided in this chapter, manufacturing uses are defined, and distinguished from nonmanufacturing uses, in the North American Industrial Classification Manual (311611 – 339999).

Construction Products Manufacturing: Manufacturing and/or processing asphalt, cement and/or concrete.

Light Manufacturing: Primarily involved in baking, brewing, fabricating, milling, processing and other similar forms of mechanical and chemical treatment. Light manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

Light Manufacturing Uses	NAICS Code
Apparel and Other Textile Mill Products	314 – 33636
Electronic and Electric Equipment, except semiconductors	334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999

Chapter 23F.04: Definitions

Light Manufacturing Uses	NAICS Code
Fabricated Metal Products	332 – 332999
Food Processing	311 – 311999
Furniture and Fixtures	337 – 33792
Industrial Machinery and Equipment	333 – 333999
Instruments and Related Products	334511 – 334518
Leather and Leather Products, except leather tanning	3162 – 316999
Lumber and Wood Products, except logging	321 – 321999
Miscellaneous Manufacturing	339 – 339999
Paper and Allied Products, except paper, pulp and paperboard mills	3222 – 322299
Perfumes, Cosmetics and Toilet Preparations	325611 – 32562
Printing and Publishing, except publishing without printing	323 – 323122
Rubber and Miscellaneous Plastic Products	326 – 326299
Stone, Clay and Glass Products, except cement	327 – 327215, 32733 – 327999
Textile Mill Products	313 – 31332
Transportation Equipment	336 – 336999
Cannabis Manufacturing	

Primary Production Manufacturing: Primarily involved in drawing, smelting, refining, rolling and extruding to produce materials such as metals or plastic. Primary production manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

Primary Production Manufacturing Use	NAICS Code
Chemicals and allied products, except pharmaceuticals and perfumes, cosmetics and toilet preparations	325 – 32532, 325413 – 325613, 3259 – 325998
Leather Tanning	31611
Paper, pulp and paperboard mills	32211 – 3221
Primary Metal Industries	331 – 331528

Material Recovery Enterprise: A business that diverts discarded materials from a number of waste streams including but not limited to the Transfer Station, drop-off, pick-up and curbside collection. Such facilities must clean, sort, repair and/or process these materials and offer them for reuse and/or recycling through wholesale and/or retail sales, including bulk sales. The retail component of these facilities is limited to the sale of items recovered from the waste stream. No new items may be offered for sale at these facilities. Material Recovery Enterprises do not include flea markets, automobile wrecking establishments, manufacturer's outlet stores (factory second stores), consignment shops, second-hand stores, antique stores or any store which offers only used furniture, clothing and/or household items.

Media Production: Commercial arts and art-related business services including, but not limited to, music and film recording and editing studios and services; film and video production; titling; video and film libraries; special effects production, and similar uses.

Medical Practitioner Office: Clinics or offices for doctors, dentists, chiropractors, optometrists, osteopaths, chiropodists or similar practitioners of the traditional healing arts, as well as practitioners of a non-traditional nature, including, but not limited to, acupuncturists, herbalists, nutritionists, midwives, reflexologists, iridologists, physical therapists, bodyworkers, but not including offices for veterinarians or opticians.

Mental Health Practitioner: A counselor, psychologist, psychiatrist or other mental health professional.

Mezzanine: An intermediate level of a building interior containing floor area without complete enclosing interior walls or partitions, placed in any story or room and not separated from the floor or level below by a wall. The floor

Chapter 23F.04: Definitions

area of any Mezzanine shall be counted as part of the total floor area for any floor area or FAR limitation. In addition, when the total floor area of any such Mezzanine exceeds thirty-three and one-third percent (33.3%) of the total floor area in that room, it shall constitute an additional Story. No more than one (1) continuous Mezzanine may be permitted in any one (1) room.

Microbusiness: Cannabis use involving more than one State license. See BMC Chapter 12.21 for definition.

Retail Nursery Microbusiness: A microbusiness that is restricted to growing and selling cannabis plants and seeds. See BMC Chapter 12.21 for definition.

Retail Storefront Microbusiness: A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See BMC Chapter 12.21 for definition and limitations

Mini-storage Warehouse: A storage warehouse characterized by individual separate spaces, which are accessible by customers for storing and retrieval of goods.

Mixed Use: The use of a lot or building with two or more different land uses including, but not limited to, residential, commercial retail, office or manufacturing, in a single structure or a group of physically integrated structures.

Monopole: A single pole support structure greater than 15 feet in height erected on the ground or on a structure to support antennas and related communications equipment.

Motel: An establishment which provides overnight lodging and parking which contains six (6) or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six (6) or more transient individuals for compensation, whether direct or indirect, and in which the rooms are usually accessible from an outdoor parking lot. A Motel is a Tourist Hotel for the purposes of this chapter.

Motorcycle and small vehicle sales: An establishment which sells, or leases long-term, new, used or pre-owned, motorized vehicles other than passenger automobiles and trucks, which are characterized by fewer than four wheels or a minimal frame, including but not limited to motorcycles, scooters, three-wheel motorcycles, electric carts, electric scooters, and such vehicles design or refurbished for alternative fuels/power sources (alternative to conventional gasoline).

Multiple Dwelling Use: A building or group of buildings, or a portion of a building used or designed as three (3) or more dwelling units.

Municipal Animal Shelter: A City-owned facility providing services for humane animal care. The orientation of the programs and services is maximizing opportunities for animal adoption. Supporting facilities may include medical care (including spay/neuter), kennels, exercise areas and adoption centers.

Nightclub: See **Entertainment Establishment**.

Non-Chartered Financial Institution: A use, other than State or Federally chartered bank, credit union, mortgage lender, savings and loan association or industrial loan company, that offers deferred deposit transaction services or check cashing services and loans for payment of a percentage fee. The term "non-chartered financial institution" shall include, but is not limited to deferred deposit transaction (payday loan) business that makes loans upon assignment of wages received, check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, and motor vehicle title lenders who offer short-term loan secured by the title to motor vehicles.

The term Non-Chartered Financial Institution shall not include non-profit financial institutions or retail sellers engaged primarily in the business of selling consumer goods to retail buyers, that cash checks or issue money orders as a service to its customers that is incidental to its main purpose or business.

Chapter 23F.04: Definitions

Non-conforming Use or Building: A Use or building which is not consistent with a provision or provisions of Title 23, but which was lawfully established or constructed prior to the effective date of the provision(s) with which it is inconsistent. A Use shall not be considered non-conforming if it is only inconsistent with the Zoning Ordinance with respect to the number of auto or bicycle spaces, their location on site, or screening.

Non-Processed Edibles: Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, grown or raised in accordance with the Berkeley Municipal Code, that are whole and intact and have not been processed, but not including cannabis as defined in Chapter 12.26 or meat. Washing, trimming, bundling, and similar handling of otherwise whole and intact foods shall not be considered processing.

Nursing Home: An establishment which provides twenty-four (24) hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the California State Department of Health Services, including but not limited to, rest homes and convalescent hospitals, but not Community Care Facilities, Senior Congregate Housing or Hospitals as defined in this Chapter.

Oakland Primary Metropolitan Statistical Area (PMSA): A geographic area defined by the U.S. Bureau of the Census, composed of the counties of Alameda and Contra Costa.

Office Use: A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity.

One Ownership: Ownership of property or possession thereof under a contract to purchase by a person or persons, firm, corporation or partnership, individually, jointly, in common or in any other manner whereby such property is under a single or unified control.

Outdoor Cafe Seating: Tables and/or chairs (including benches) and umbrellas associated with lawfully operating Food Service Establishments located in an outdoor area on private property.

Owner: The person or persons, firm, corporation or partnership exercising one (1) ownership as defined in this Chapter.

Owner or Operator (also Provider or Service Provider): The person, entity or agency primarily responsible for installation and maintenance of the facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

Parapet: A low wall or railing not exceeding forty-two (42) inches above the roof and along its perimeter, usually for fire containment and/or architectural purposes.

Parcel: A term used by the Alameda County Tax Collector to describe a lot, portion of a lot or a group of lots for property tax purposes.

Parking Area, Accessory: An area of a lot reserved for use as off-street parking intended to serve a building or use which is the primary or main use of the lot.

Parking Lot or Structure: The exclusive or primary use of a lot for off-street parking spaces, in either an open paved area or within a structure built specifically for parking purposes.

Parking Space, Off-street: An area, covered or uncovered, designed for the storage of an automobile which is paved, accessible by an automobile, and usable for such automobile storage use without permanent obstruction.

Path: A City-owned right-of-way used or designed for pedestrian access.

Penthouse, Mechanical: A room or enclosed structure, attached to the roof level for the uppermost story, for purposes of sheltering mechanical equipment, water tanks and/or vertical openings for stairwell and elevator shafts. Such a structure shall be considered a story if it contains usable floor area or habitable space.

Chapter 23F.04: Definitions

Personal/Household Service: A business establishment which engages in personal and/or household services including, but not limited to:

Personal/Household Service	Description
Barber/Beauty Shops	Includes manicure and other personal care; excluding massage
Clothing, Shoes and/or Household Items Repair Shops	Includes alterations and tailoring
Computer/Desktop Publishing (self-service)	
Dry Cleaning and Laundry Agents	
Framing/Mounting Shops	For art, posters and photographs
Optician Shops	Includes eyeglass and contact lens sales
Photocopy Stores	Includes printing, FAX and magnetic disk reproduction services
Photography Studios	
Postal/Packaging/PO Box Service Shops	

Personal Wireless Services: Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996.

Plumbing Shop: A business offering plumbing supplies and service which has on-site supply storage and service vehicles.

Primary Dwelling Unit: A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.

Privately-Owned Public Open Space: Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access. Such areas may be indoor or enclosed, but shall include natural light in the form of windows, skylights, entryways, or other openings. Such areas shall be clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance. Such areas shall be separated from the grade of the public sidewalk by a height no greater than three vertical feet unless an Administrative Use Permit is obtained.

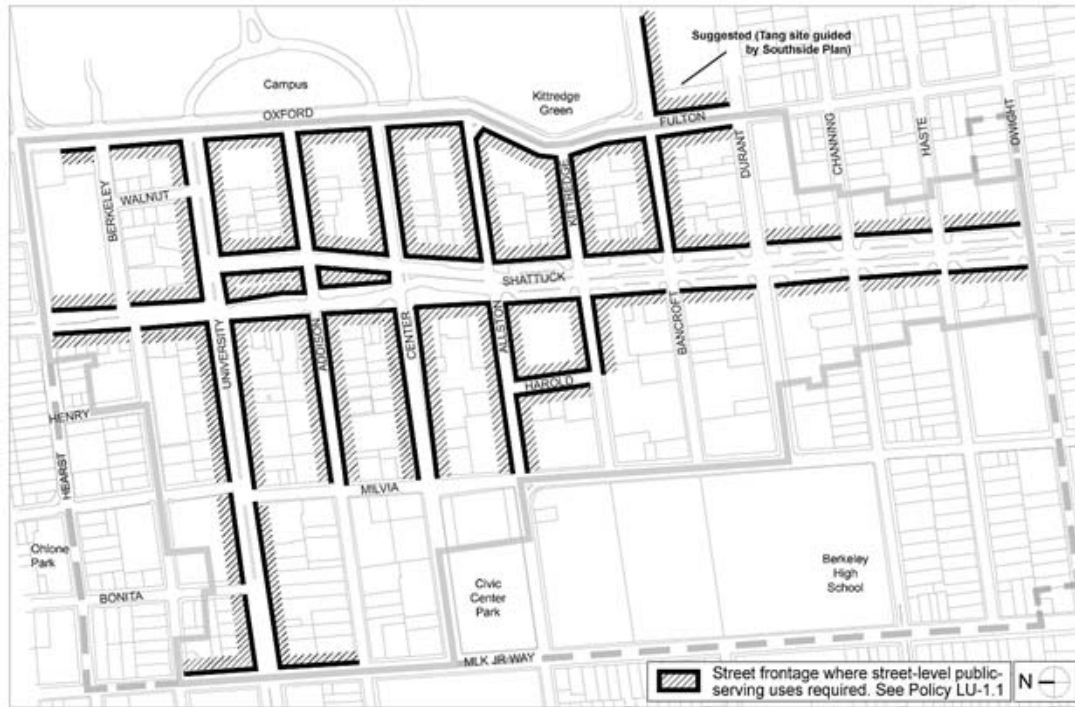
Public Property: All real property owned, operated or controlled by the City, other than PROW and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.

Public right-of-way (PROW): Any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.

Public Safety and Emergency Services: Facilities that provide police and fire protection.

Public Serving Frontages: As identified in the figure that follows (and Figure LU-3 of the Downtown Area Plan), lots with frontages on streets where it is desirable to have high levels of foot traffic and visual/physical connections between public and interior spaces.

Chapter 23F.04: Definitions



Readily Visible: A wireless telecommunications facility is readily visible if it can be seen from street level or from the main living area of a legal residence in a residential district or from a public park by a person with normal vision, and distinguished as an antenna or other component of a wireless telecommunication facility, due to the fact that it stands out as a prominent feature of the landscape, protrudes above or out from the building or structure ridgeline, or is otherwise not sufficiently camouflaged or designed to be compatible with the appurtenant architecture or building materials. For purposes of this definition, "main living area" means the living and dining and similar areas of a dwelling, but not bedrooms, bathrooms or similar areas.

Rear Main Building: A Main Building situated behind another Main Building existing or proposed on a parcel located in the R-1A District.

Receiving Lot: See **Lot, Receiving**.

Recycling Redemption Center: A facility, use or structure for the collection of recyclable goods, including, but not limited to, beverage containers and newspapers.

Related equipment: All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.

Religious Assembly Use: A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.

Research and Development: A Research and Development facility is an establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

Resident: A person whose primary residence is in Berkeley.

Residential Care Facility: See **Community Care Facility**.

Chapter 23F.04: Definitions

Residential Hotel: See **Hotel, Residential**.

Residential Hotel Room: A room which is:

1. Used, designed or intended to be used for sleeping for a period of 14 consecutive days or more; and
2. Not a complete dwelling unit, as defined in this Title; and
3. Not a Tourist Hotel Room, as defined in this Title.

Residential Use: The categories of Residential Uses of a property include dwelling unit or Units, Group Living Accommodations and Residential Hotels.

Retail Products Store: An establishment engaged in the sales of personal, consumer or household items to the customers who will use such items, including, but not limited to:

Retail Products Stores	Comments
Antique Stores	Includes Collectibles
Art/Craft Shops	
Art Galleries	
Art and Craft Supply Stores	
Audio/Video Records, Tapes, Disks Sales Shops	Excludes video rental stores
Automobile Parts Stores	Excludes service of auto parts
Bicycle Shops	Includes sales, parts and repair/service
Bookstores, Periodical Stands	
Clothing Stores	Includes apparel, hats, shoes and accessories
Computer Stores	Hardware and software
Drugstores	Includes pharmaceutical, sundries, cosmetic/personal care items
Fabric, Textile and Sewing Supply Shops	
Flower and Plant Stores	Includes live, fresh-cut and/or dried flowers; excludes nurseries
Food Products Stores, Specialized	Includes Bakeries
Food Products Stores, General	Includes groceries, markets and supermarkets
Furniture Stores, Household or Office	Includes carpets and rugs
Garden Supply Stores, Nurseries	Does not include Cannabis Nurseries, see Cannabis Cultivation definition in 12.21.020
Gift/Novelty Shops	
Glass Pane and Mirror Stores	
Hobby Shops	
Household Hardware and Housewares Stores	
Household Electronics/Electrical Stores (Audio, Telephone and Video/TV)	Excludes video rental stores
Jewelry/Watch Shops	
Linen Shops	Includes bedding
Musical Instruments and Materials Stores	
Office Supply Stores	
Paint/Wallpaper Stores	
Photography Equipment Supply Stores	Includes cameras and film developing

Chapter 23F.04: Definitions

Retail Products Stores	Comments
Secondhand Stores	Includes used/vintage clothing and household goods
Small Appliance Stores	
Sporting Goods Stores	Includes equipment, clothing and supplies, excluding Firearm/Munitions Businesses
Stationery, Cards and Paper Goods Stores	
Toy Stores	
Variety Stores	

Retaining Wall: A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one (1) side of the wall.

Rooming House: A building used for residential purposes, other than a hotel, where lodging for five (5) or more persons, who are not living as a single Household, is provided for compensation, whether direct or indirect. In determining the number of persons lodging in a Rooming House, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent (also see Boarding House).

Satellite Dish: A device which is designed to receive signals or communications from orbiting satellites.

School: A building or group of buildings for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other private or public education institutions offering a general course of study at primary, secondary or high school levels which is equivalent to the courses of study at such levels offered by the BUSD. Day nurseries, vocational and trade schools shall be considered schools only when incidental to the conduct of the school as defined herein.

Seasonal Product Sales: Sales of products for a limited duration of time, usually associated with a seasonal holiday, including but not limited to, sales of Christmas trees and pumpkins.

Service Use: A business in which no more than fifty percent (50%) of its gross receipts are subject to retail sales taxes.

Services to Buildings and Dwellings: A business that provides services to customers at a location other than the business location. Examples include but are not limited to: carpet/upholstery cleaning, security services, and janitorial services.

Senior Congregate Housing: A use which provides Group Living Accommodations occupied by persons sixty (60) years or older in age who live in sleeping rooms without kitchen facilities, and which contains congregate bath and/or dining facilities or rooms, but does not include Community Care Facilities.

Setback Line: A line parallel to a specified lot line which defines a required yard area.

Shed, Garden and/or Tool: An Accessory Structure designed to store tools, lawn and garden care or maintenance equipment or materials, and which is not designed to contain any habitable space.

Shelter, Homeless or Women's: See **Transitional Housing**.

Sidewalk Seating: Tables and/or chairs (including benches and furniture) as defined in BMC Section 14.48.150.

Sign: Any sign as defined in BMC Section 20.08.190.

Single Family Dwelling: A separate building designed for and occupied exclusively by one (1) Household.

Single Residential Occupancy (SRO) Room: A room for residential or sleeping purposes in a Residential Hotel which is designed for occupancy of one (1) person only.

Chapter 23F.04: Definitions

Skateboard Ramp: A ramp, platform, course or facility used for skateboard riding and made of wood or other solid material.

Slope: See **Grade**.

Smoke Shop: An establishment engaged primarily in the sale of tobacco and/or tobacco-related products.

Solar Energy Device/Equipment: Any solar collector or other solar energy device or any structural design feature of a building of which the primary purpose is to provide for the collection, storage or distribution of solar energy for space heating or cooling, water heating or the generation of electricity.

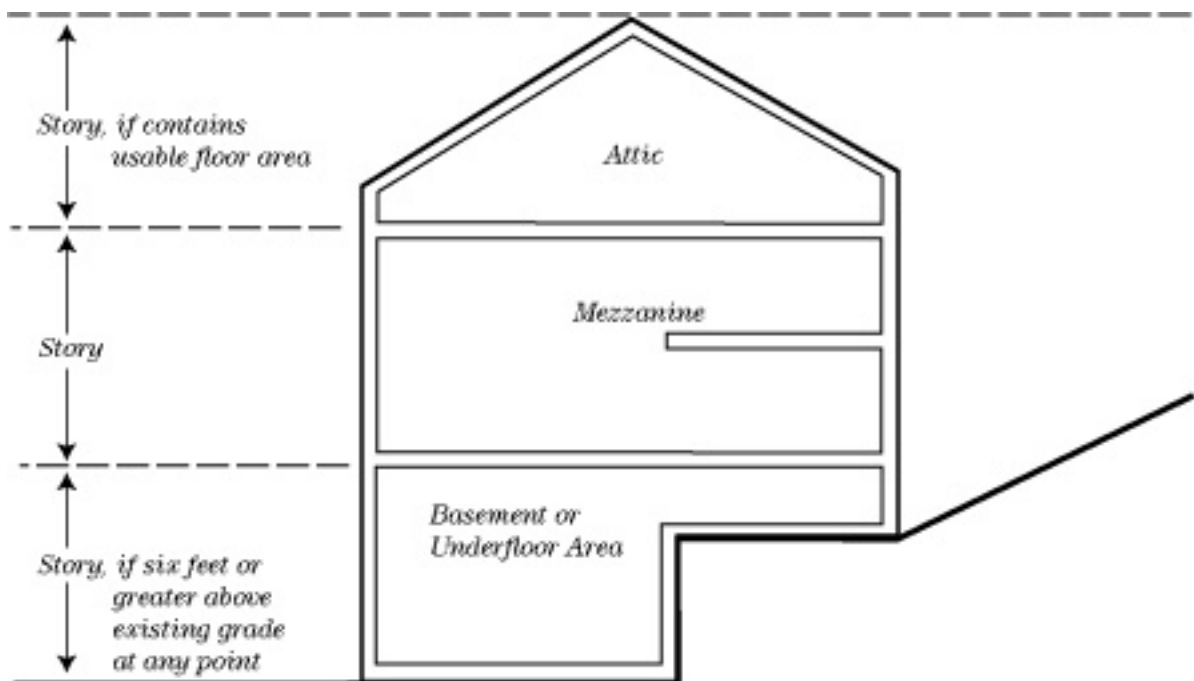
Sorority House: A building used for Group Living Accommodations by an organization recognized by the UC Berkeley, or other institution of higher learning.

Source Lot: See **Lot, Source**.

Stealth Facility: Any wireless telecommunications facility that is not readily visible because it has been designed to blend into the surrounding environment and is visually unobtrusive. Examples may include architecturally screened roof-mounted antennas, building-mounted antennas that are painted and treated as architectural element to blend with the existing building, monopoles that are disguised as flag poles or public art, or camouflaged using existing vegetation. A pole or tower with antennas that are flush with or do not protrude above or out from the pole or antenna is not considered to be a stealth facility unless the pole or tower is an existing pole or tower, existing utility pole or tower, or existing light standard or street light, or replacement thereof.

Story: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building between the floor of the topmost floor and the ceiling or roof above. If the finished floor level directly above the ceiling of a basement, garage structure, cellar or unused underfloor space is more than six (6) feet above existing grade at any point, such basement, cellar or unused underfloor space shall be considered a story. Penthouses used for purposes other than shelter of mechanical equipment or shelter of vertical shaft openings in the roof shall be considered a story. See Figure 8.

(Figure 8 Determination of Stories)



Chapter 23F.04: Definitions

Street: A public or private thoroughfare which provides principal means of access to Abutting Lots, including but not limited to, avenue, place, way, manor, drive, circle, lane, court, boulevard, highway, road and any other thoroughfare except an alley or a path as defined in this Chapter.

Street Line: The boundary between a lot and an adjacent street.

Structural Alteration: Any physical change to or removal of the supporting members of a building, foundation or bearing walls, columns, beams or girders or creation or enlargement of a window or door, change of a roofline or roof shape, including creating, enlarging or extending a dormer.

Structural Alteration, Public Safety: Any structural alteration or physical change to a building that provides greater safety to the public or occupants by strengthening the building against seismic activity, which does not result in new floor area except that created by necessary structural improvements or physical changes as required under BMC Chapter 19.38 and 19.39.

Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is a Structure for the purposes of this chapter.

Accessory Structure: A detached structure, other than an Accessory Building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential Accessory Structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential Accessory Structures may include, but are not limited to, storage buildings, garages, sheds and other outbuildings.

Subterranean Structure: A roofed structure constructed underground, with no building stories aboveground, of which the roof does not exceed three (3) feet above the pre-existing grade. Such structures are either separated from a building or connected to a building only by means of a passageway or hallway with no openings to finished grade except for a doorway.

Temporary Structure: A tent, tent-house, trailer, mobile office, mobile home or other movable structure or other temporary structure whose construction does not require a building permit.

Structure Ridgeline: The line along the top of an existing roof or top of a structure, including existing parapets, penthouses, or mechanical equipment screens.

Studio: See **Art/Craft Studio**, also see **Dance, Exercise, Martial Arts or Music Studio**.

Supportive Housing (Health and Safety Code 50675.14(b)): Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in subdivision (d) of Section 53260 of the CA Health and Safety Code with no limit on length of stay, that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

Telecommunications: The transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received as defined in the Telecommunications Act of 1996.

Telecommunications Equipment: Equipment, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services, and includes software integral to such equipment (including upgrades) that is not located, in whole or in part, in, above, or below Streets, Public Rights-of-Way or other Public Property.

Telecommunications Service: The offering of telecommunications for a fee directly or indirectly to any Person as defined in the Telecommunications Act of 1996.

Chapter 23F.04: Definitions

Telecommunications Tower: Any mast, pole, monopole, lattice tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than 15 feet tall and 6 inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a telecommunications tower.

Temporary Use: See **Use, Temporary.**

Temporary Use Permit: A Permit issued for a temporary use or a temporary structure.

Theater: Any establishment that has a permanent stage or screen for the presentation of live or recorded entertainment and which contains an audience viewing hall or room, with fixed seats. Theaters may include but are not limited to live performances of music, dance, plays and orations and/or the showing of projected motion pictures and/or videotapes.

Tourist Hotel: See **Hotel, Tourist.**

Tourist Hotel Room: A sleeping room used, designed or intended for occupancy by transient guests for a period not to exceed fourteen (14) consecutive days, which is not a residential hotel room or a dwelling unit.

Townhouse: A dwelling unit in which ownership is in the form of a condominium arrangement which is located in a separate building from any other dwelling unit.

Transitional Housing (from Health and Safety Code Section 50675.2(h)): Any dwelling unit or a Group Living Accommodation configured as a rental housing development, but operated under program requirements that call for the termination of assistance and recirculation of the assisted units to another eligible program recipient at some predetermined future point in time.

Treehouse: An accessory structure built within, on or above the branches of any living tree.

Truck and Utility Trailer Rental and Leasing: Establishments primarily engaged in renting or leasing one or more of the following: trucks, truck tractors or buses; semitrailers and utility trailers. This definition is declaratory of existing law in that it defines a previously undefined term in a manner that is consistent with the City's prior interpretation and the plain meaning of the term.

Urban Agriculture (including community gardens): The production of horticultural crops for harvest, sale, and/or donation, including community gardens. Urban Agriculture does not include cannabis cultivation and does not pertain to raising animals.

Urban Agricultural Products: Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban Agricultural Products do not include cannabis products.

Usable Open Space: Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.¹

Usable Space: Any portion of a building or structure which is designed to be or can be used as habitable space, which has finished walls (sheetrock or plaster) and/or is heated with any fixed furnace or central heating system, including bathrooms, halls, garages and laundry rooms. Storage areas with over six (6) feet of vertical space shall also be considered usable space.

¹ Also see Section 23D.04.050.

Chapter 23F.04: Definitions

Use: The purpose for which land or premises or a building thereon is designed, arranged or intended or for which it is or may be occupied or maintained.

Accessory Use: A use that is of the same nature as or complementary to the principal use of a lot or a building located on the same lot, and that is not independent of the principal use.

Ancillary Use: A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.

Incidental Use: A use of a lot and/or building that is secondary to the principal permitted use, but that by nature could be independent. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use.

Temporary Use: A use of a building, property or land area, that is limited in duration of time, does not permanently alter the character or physical facilities of the premises or property and is in keeping with the purposes listed in the District where it is located.

Utility: An entity which provides water, sewage collection, electricity, natural gas, telephone, cable television or other public service or good to the public.

Vehicle Sharing (which includes "Car Sharing") means a membership-based service that:

1. Provides a mobility service that helps meet City goals for alternative transportation in order to enhance mobility options, reduce congestion and promote walking, biking and transit;
2. Is primarily designed for shorter time and shorter distance trips that can function as an extension of the public transportation network;
3. Offers membership to all qualified drivers in the City;
4. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
5. Offers members access to a dispersed network of shared automotive vehicles, available 24 hours per day, 7 days a week, at self-service locations where the vehicles are not attended; and
6. Provides vehicle usage without restriction at hourly and/or per mile rates that are directly proportional to usage and include fuels (gas), insurance, maintenance, and reserved parking when vehicles are not in use.

Vehicle Sharing Pod: Any location reserved for shared vehicles that:

1. Is located in a location approved for off-street parking or municipal parking lot; or
2. Is located on street in a site designated by the City for this use; and
3. Does not involve more than 5 shared vehicles per vehicle sharing service provider; and
4. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances.

Veterinary Clinic: A facility providing veterinarian and/or medical care or treatment for animals, but not including kennels or other animal boarding facilities for non-medical care of animals of over twenty-four (24) hours.

Chapter 23F.04: Definitions

View Corridor: A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

Warehouse Based Non-Store Retail: Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. This use includes Delivery-Only Retailers located in the Manufacturing (M) District.

Wheelchair Ramp: A sloping ramp, designed in width and steepness to allow a person in a wheelchair to reach an entrance doorway of a building or a landing at the same level as the doorway.

Wholesale Use: A Business Activity use of a lot and/or building of any good, article, material or substance for the purpose of resale. Any use defined as conducting Wholesale Trade under BMC Section 9.04.150 shall be a Wholesale Use for this chapter.

Windmill: A device that converts the kinetic energy of the wind to a usable form of electrical or mechanical energy, usually by means of rotating blades.

Wireless Telecommunications Facilities: Personal wireless service facilities as defined in the Telecommunications Act of 1996, including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio towers, television towers, and government-operated public safety networks.

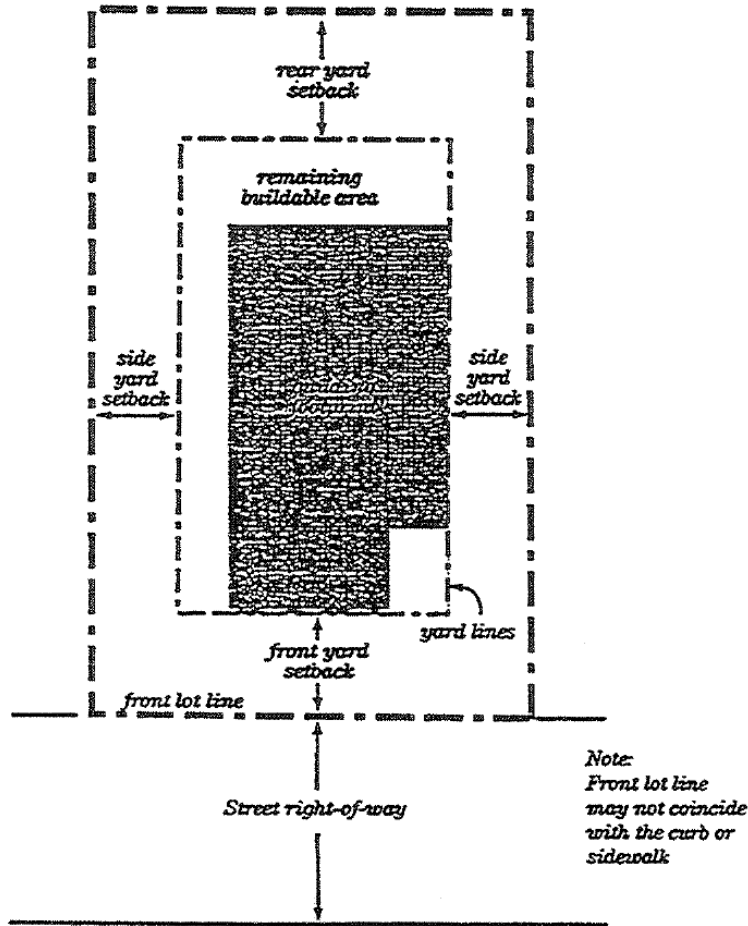
Yard: A required open area on a lot that is between a property line and a setback line. A yard is unoccupied and unobstructed from the ground upward by any portion of a building or structure, except as otherwise permitted in this Title. Specified Yard areas are as provided in individual District Sections of this chapter and defined as follows:

Front Yard: A yard extending across the full width of the front of a lot from the front lot line to the front setback line.

Rear Yard: A yard extending across the full width of the lot between the rear lot line and the rear setback line.

Side Yard: A yard between the side lot line and the side setback line, and extending from the front lot line to the rear lot line.

(Figure 9 Yard Detail)



(Ord. 7753-NS § 3, 2021; Ord. 7707-NS § 2, 2020; Ord. 7696-NS §§ 26, 27, 2020; Ord. 7690-NS § 1, 2020; Ord. 7649-NS § 1, 2019; Ord. 7625-NS §§ 11 – 13, 2018; Ord. 7620-NS § 24, 2018; Ord. 7599-NS § 30, 2018; Ord. 7593-NS § 3, 2018; Ord. 7536-NS § 2, 2017; Ord. 7522-NS § 3, 2017; Ord. 7513-NS § 4, 2016; Ord. 7467-NS § 2, 2016; Ord. 7425-NS §§ 1, 2, 2015; Ord. 7358-NS § 10, 2014; Ord. 7354-NS § 2, 2014; Ord. 7322-NS § 14, 2013; Ord. 7304-NS § 7, 2013; Ord. 7258-NS § 2, 2012; Ord. 7256-NS § 2, 2012; Ord. 7231-NS § 1, 2012; Ord. 7210-NS § 26, 2011; Ord. 7205-NS § 1, 2011; Ord. 7204-NS §§ 12, 13, 2011; Ord. 7169-NS §§ 1 – 3, 2011; Ord. 7167-NS § 28, 2011; Ord. 7129-NS § 18, 2010; Ord. 7125-NS § 6, 2009; Ord. 7019-NS § 2, 2/26/08; Ord. 7013-NS § 9 (part), 1/15/08; Ord. 6980-NS § 9 (part), 2007; Ord. 6949-NS §§ 19-20 (part), 2006; Ord. 6942-NS § 1 (part), 2006; Ord. 6909-NS § 11, 2006; Ord. 6856-NS § 25 (part), 2005; Ord. 6854-NS § 22 (part), 2005; Ord. 6773-NS § 2 (part), 2003; Ord. 6763-NS § 33 (part), 2003; Ord. 6738-NS § 2 (part), 2003; Ord. 6688-NS § 3 (part), 2002; Ord. 6671-NS § 3, 2001; Ord. 6669-NS § 3, 2001; Ord. 6644-NS § 4, 2001; Ord. 6509-NS § 1, 1999; Ord. 6478 § 4 (part), 1999)

Title 23: APPENDIX A

Title 23

APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
1.0	Adoption of Zoning Plan	23A.04.020
1.1	Applicability to Other Agencies	23A.24.010
1.2	Title of Ordinance	23A.04.010
1.3	Reference to Chapter Numbers	Eliminated
2.0	Designation of Districts	23A.16.020
2.1	Official Zoning Map	23A.16.010
2.2	District Boundaries	23A.16.030
2.3	General Restrictions	23A.12.010
2.3(a)	Buildings and Uses	23A.12.010
2.3(b)	Building Height	23A.12.010
2.3(c)	Yards not apply to other lots	23A.12.030.B
2.4	Lot Area Reduction Forbidden	23A.12.020.A
2.5	Classification of Vacated Streets	23A.16.030.E

	Districts	
5	R-1 District	23D.16
5A	R-1A District	23D.20
5B	ES-R District	23D.24
6	R-2 District	23D.28
6A	R-2A District	23D.32
7	R-3 District	23D.36
8	R-4 District	23D.40
8A	R-5 District	23D.44
8C	O-R District	Eliminated
9	C-1 District	23E.36
9A	C-1A District (now C-N)	23E.40
9B	C-1B District (now C-N)	23E.40
9C	C-1C District (now C-N)	23E.40
9D	C-1B(E) District (now C-E)	23E.44
9E	C-1A(NS) District (now C-NS)	23E.48
9F	C-1(SA) District (now C-SA)	23E.52
9G	C-1(T) District (now C-T)	23E.56
9H	C-1A(SO) District (now C-SO)	23E.60
--	C-W District [West Berkeley]	23E.64
10	C-2 District	23E.68
11	C-3 District	Eliminated
12	M District	23E.72
--	MM District	23E.76
--	MU-R District	23E.84

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
--	MU-LI District	23E.80
12A	SP District	23E.88
13	U District	23E.92
14	H District	23E.96
14A	PS District	Eliminated
15.0	General Provisions	23C
15.1(a)(1)	Renting to 4 or fewer persons	23C.20.010.A
15.1(a)(2)	General	23C.20.010.B
15.1(a)(3)	Horse Stables	Individual Districts
15.1(b)	Parking Lot Standards: R- Dists	23D.12.090
15.1(c)	Public Uses, Utilities	Individual Districts, 23D.20.030.B, 23E.20.030.B
15.1(c)	Wireless Communication Towers	Individual Districts
15.1(d)	Mineral Extraction with UP	Individual Districts
15.1(e)	Commercial Recreation	Individual Districts
15.1(e) 2nd Par	Amusement Device Arcades	Individual Districts, 23E.16.050
15.1(f)	Dance Halls	Individual Districts
15.1(g)	Prohibited Uses:	
	Cemeteries, Crematories	Individual Districts
	Stock Yards, Slaughter Houses	Eliminated
	Alcohol Sales at Gas Stations	None -- 1989 State Law Voids
15.1(h)	Definition of <i>Private Clubs</i>	23F
15.1(h)(1-6)	Club Use Standards	None -- Eliminated
15.1(i)	Drive-ins	Individual C- Districts
15.1-1	Conversion of Dwellings	23C.08.030
15.1-1(a)	Purpose	23C.08.030
15.1-1(b)	Use Permit Requirement	23C.08.030.A
15.1-1(c)	Use Permit Findings	23C.08.030.A-C
15.1-1(d)	Not apply to Other Uses	Eliminated
15.1-2	Residential Hotel Rooms	23C.08.040
15.1-2(A)	Legislative Findings	23A.04.030.I
15.1-2(B)	General Conversion Requirements	23C.08.040.A
15.1-2(C)	Permitted Conversions	23C.08.040.A
15.1-2(D)	Exchange of Rooms	23C.08.040.B
15.1-2(E)	Definition of Rooms	23F
15.1-2(F)	Daily Log Required	Eliminated
15.1-2(G)	Regulations Reference	Eliminated
15.1-2(H)	Violations	23B.60
15.1-2(I)	Three Year Review	Eliminated
15.1-2(J)	Private Right of Action	Eliminated
15.1-3	Demolition of Non-residential Structure	23C.08.050

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
15.1-3(a)	Purpose	23A.04.030.G
15.1-3(b)	Demolition Requires Use Permit	23C.08.050.A
15.1-3(c)	Unsafe Buildings Exempted	23C.08.070
15.1-3(d)	LPC Review if 40+ Years Old	23C.08.050.C
15.2	Height	23D.04.020; 23E.04.020
15.2(a)	Public Buildings	23D.04.020.A, 23E.04.020.A
15.2(b)	Towers, Poles, Chimneys	23D.04.020.B, 23E.04.020.B
15.2(c)	Accessory Buildings	23D.08.030
15.3	Yards and Building Separations	23D.04.030
15.3(a)	Measurement Point	23D.04.030
15.3(a)(1)	Architectural Features	Table 23D.04.030.A
15.3(a)(2)	Porches	Table 23D.04.030.A
15.3(a)(3)	Balconies	Table 23D.04.030.A
15.3(a)(4)	Wheelchair Ramps	23D.04.030.A.2
15.3(b)	Attached to Main Building	23D.04.030.C
15.3(c)	Accessory Buildings Standards	23D.08
15.3(d)	Definition of Front of Lot	23D.04.010.D
15.3(e)	Subterranean Structures	23D.04.030.F
15.3(f)	No Side Yards on Adjacent Lots	23D.04.030.D
15.3(g)	Solar Equipment Exception	23D.04.030.G
15.3(h)	AUP for Wheelchair Ramps	23D.04.030.A.2.d
15.4	Separation of Buildings	23D.04.030.E
15.5	Relocation of Buildings	23C.08.060.D
15.6	Parking Requirements	23D.12, 23E.28
15.6(a)	Purpose	23D.12.010, 23E.28.010
15.6(b)	Applies to Certain Actions	23D.12.020; 23E.28.020
15.6(c)	Parking not Reduced	23D.12.050; 23E.28.050
15.6(d)	Permit Conformance	23D.12.020.C; 23E.28.020.C
15.6(e)	Deed Restriction	23E.28.030.C
15.6(f)	Calculations when Two Uses	23D.12.070
15.6(g)	Rounding	23D.12.050.C; 23E.28.050.C
15.6(h)	Seating Standards	Eliminated
15.6(i)	Employees per Shift	23E.28.050.F
15.6(j)	300 Foot Radius	23D.12.030.B; 23E.28.050.F
15.6(k)	Standards for Uses not Listed	Individual Districts
15.6(l)	Residential Parking Standards	Individual R- Districts
15.6(m)	Other Uses in R- Districts Standards	Individual R- Districts
15.6(n)	Joint Use Parking Allowed	23D.12.060, 23E.28.060
15.6(o)	Offices in R-4 and R-5 Districts	23D.12.060.B
15.6(p)	Traffic Engineer Determination	23D.12.040; 23E.28.040.
15.6(q)	Parking in Yards: Screening Requirements	23D.12.080, 23E.28.080
15.6(r)	10 Foot Rule from Doors/Windows	23D.12.080.A

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
15.6-1	Off-Street Loading Spaces	23E.32.010
15.6-1(a)	Standard Required per 10,000 sq. ft.	Individual C- Districts
15.6-1(b)	Not use Off-street Parking Space	23E.32.010.D
15.6-1(c)	Standard Required in R- Districts	Individual R- Districts
15.6-1(d)	Access and Paving Required	23E.32.010.E
15.6-1(e)	Location and Dimension Standards	23E.32.010.B
15.6-1(f)	Distance from R- District	23E.32.010.F
15.7	Height of Fences	23D.08.070.A.2
15.8	Building Site Area	23C.04.020.B
15.10	Lot Divided by Zoning Boundary	23A.16.030.B
15.11	Coverage	23D.04.040
15.12	Definition of <i>Penthouse, Mechanical</i>	23F
15.13	Pedestrian Walkway Required	23D.04.070
15.14	Usable Open Space	23D.04.050
15.15	Screening: Garbage Cans, Meters	23D.04.060
15.16	Adult-oriented Businesses	23E.16.030.
15.17	Live/Work Units	23E.20
15.18	Alcoholic Beverages	23E.16.040
15.19	Sidewalk Cafe Seating	23E.24
15A	Design Review	23E.08 and 23E.12
15A.1(a)	Types of Review	23E.12.040
15A.1(b)	Staff Review	23E.12.040.A
15A.1(c)	Application Requirements	23E.12.010.A
15A.1(d)	Continued Date	23E.12.050.A
15A.1(e)	LPC/Staff Responsibilities	23E.12.020
15A.1(f)	Building Permit Conformance	23E.12.020.C
15A.1(g)	Fees	23E.12.010.B
15A.1(h)	Time Limits: 60 Days	23E.12.030
15A.2(a)	Non-Residential Districts	23E.08.020.A
15A.2(b)	Exterior Construction/Permits	23E.08.020.B
15A.2(c)	Excludes Land Use	23E.08.010.C
15A.2(d)	Scope	23E.08.020.B
15A.3(a)-(c)	Purpose and Intent	23E.08.010.A-C
15A.4	Design Review Committee	23B.08
15A.4(a)	Membership	23B.08.010.B
15A.4(b)	Meetings -- No Public Hearings	23E.12.050.A
15A.4(c)	Responsibility and Powers	23B.08.020
15A.5	Review of Ordinance	Eliminated
15A.6	Guidelines	23E.08.010.B (Reference)
15B	Inclusionary Housing	23C.12

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
15B.0	Applicability of Regulations	23C.12.030
15B.1	Council Findings	23A.04.030.J
15B.2	Purpose	23C.12.010
15B.3	Definitions	23F
15B.4	Designated Implementing Authority	23C.12.090
15B.5	General Inclusionary Requirements	23C.12.030
15B.5(a)	Required 20% of Units	23C.12.030.A
15B.5(b)	State Density Bonus	23C.12.050
15B.6	Written Agreement	23C.12.040.B
15B.7	General Construction Requirements	23C.12.040.F
15B.8	Rental Housing Requirements	23C.12.060.
15B.9	Ownership Requirements	23C.12.070
15B.10	Purchaser Restrictions	23C.12.070.C
15B.11	Control of Re-sale	23C.12.070.D
15B.12	In-lieu Participation Fees	23C.12.040.E
15B.13	Avenues Plan Requirements	23C.12.080
16	Non-conforming Uses and Buildings	23C.04.020
16.0	Continuation	23C.04.050
16.1	Non-conforming Use of Buildings	23C.04.020.A
16.2	To Change Non-conforming to Conforming	23C.04.040
16.3	Destruction of Non-conforming Buildings	23C.04.090
16.4(a)	Cessation	23C.04.030
16.4(b)	Cessation of Adult Uses	Eliminated
16.5(a)	Changes of Use	23C.04.060.A
16.5(b)	Extending Non-conforming Use	23C.04.060.B
16.5(c)(1)	Enlarge Non-Conforming Buildings -- Conform; ZP	23C.04.070.A
16.5(c)(2)	Enlarge Non-Conforming Buildings -- Yards, Height; AUP	23C.04.070.B
16.5(c)(3)	Enlarge Non-Conforming Buildings -- with Non- conforming Use; UP	23C.04.070.D
16.6	Buildings under Construction	23B.56.100.B
16.7	Emergency Uses	23A.24.030.C
16.8	Effect of Change of Districts	Eliminated
17.0	Zoning Permits (renamed Zoning Certificates)	23B.20.040
17.1	Application Fee and Issuance	23B.20.010 and 23B.20.050
17.2(a)	Applicability	23B.20.060
	Zoning Adjustments Board	
18.0	Members	23B.04.010
18.1	Board Powers	23B.04.020

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
	Variances	23B.44
19.0	Power to Grant	23B.44.010
19.1	Application, Fee	23B.44.020.A
19.2	Public Hearing	23B.44.020.C
19.3	Notices:	23B.44.020.B
19.3(a)	Posting Requirements	Refer to 23B.32.020.C
19.3(b)	Mailing Requirements	Refer to 23B.32.020.D
19.3(c)	Extension of Time	Refer to 23B.32.020.F
19.3(d)	City Council Notice Requirements	Refer to 23B.32.080.A
19.3(e)	Neighborhood Organizations	23B.24.060
19.3(f)	North Shattuck Special Regulations	Eliminated
19.4	Conduct of Hearings	Refer to 23B.32.030
19.5	Notice of Decision	Refer to 23B.32.050
19.6	Certification by Council	Refer to 23B.32.090
19.7	Conditions to Grant (FINDINGS)	23B.44.030
19.8	Temporary Variances	23B.40
19.9	Effective Date	Refer to 23B.32.050.C
19.10	Exercise	Refer to 23B.56.100.A
19.11	Cessation	Refer to 23B.56.100.C
19.12	Transfer	Eliminated
19.13	Appeals to Council	Refer to 23B.32.050
19.14	Resubmittal of Applications	23B.56.090
	Permits	
20.0	Use Permit Application, Fee	23B.24.020
20.1	Issuance; First paragraph	23B.28.010.A, 23B.32.010
	Administrative Use Permit Requirements	
20.1	Second paragraph	23B.28.010.B
20.1	Paragraphs 3-27 (District AUPs)	Moved to Individual Districts
20.1	Paragraph 28 (Ref: General 15 and 16 AUPS)	Individual Districts and applicable general sections
20.1	Paragraph 29 (Ref: 15.1-1)	23C.08.030.B
20.1	Paragraph 30 (Comm Acc Bldg Demo)	23C.08.050.B.
20.1	Paragraph 31 (Charitable Uses)	Eliminated
20.1	Paragraphs 32-33 (AUP Notice and Referral Requirements)	23B.28.030, 23B.28.040
20.1	Paragraph 34 (Use Permit Notice)	23B.32.020.B
20.2	Findings	23B.32.040.A
20.3	Use Permits	23B.32
20.3(a)	Conditions	23B.56
20.3(a)(3)	Transfer Condition	Eliminated
20.3(b)	Plans become ConditionsExcludes Other uses	23B.56.030, 23B.56.010.A

Title 23: APPENDIX A

Table Relating Ordinance Sections:
Old Ordinance to New Ordinance Table

<u>Old Section</u>	<u>Description</u>	<u>New Section</u>
20.3(c)	Abandonment	23B.56.100.C
20.3(d)	Guarantees	23B.56.050
20.3(e)	Review if Change in Character	23B.56.020
20.4	Administrative Use Permit Appeals	23B.28.060
20.5	Board Issued Use Permit Appeals	23B.32.05.c
20.5-1	Resubmittal of Application	23B.56.090
20.6	Revocation of Use Permits	23B.60
21	Reclassification of Property	23A.20
22	Definition of terms	23F
23	Enforcement	23B.64.010.D, E
24	Penalty -- Violations	23B.64.010.F
25	Abatement of Nuisance Uses	23B.64.020, 040
26	Repeal of Previous Ordinances	23A.04.020.B
27	Interpretation	23A.24.030
28	Constitutionality	23A.24.030.E

Other Laws Incorporated into the Revised Zoning Ordinance

<u>Old Reference</u>	<u>Description</u>	<u>New Section</u>
BMC 12.52	Barbed Wire Fences	23D.08.070.A.1, 23E.04.040.C
BMC 19.10	Temporary Buildings	23B.40.010
BMC 19.56	Rental Removal	23C.08.030.D
BMC 22.12	NCPO -- Neighborhood Commercial Preservation Ordinance	Individual C- Districts
NPO	Neighborhood Preservation Ordinance (Ordinance #4641-N.S. -- Section 5)	23C.08.010, 23C.08.020

Title 23: APPENDIX A

Title 23: APPENDIX B

Title 23

APPENDIX B

Table Relating Ordinance Sections: New
Ordinance to Old Ordinance Table

<u>New Section</u>	<u>Description</u>	<u>Old Section</u>
23A.04.010	Title of Ordinance	1.2
23A.04.020	Adoption of Zoning Plan	1.0
23A.04.020.B	Repeal of Previous Ordinances	26
23A.04.030	Purposes	(Preamble)
23A.04.030.G	Demolition Controls Purpose	15.1-3(a)
23A.04.030.I	Purposes (Housing)	15.1-2(A), 15B.1
23A.12.010	General Regulations	2.3
23A.12.020.A	Lot Area Reduction Forbidden	2.4
23A.12.030.B	Yards not apply to other lots	2.3(c)
23A.16.010	Official Zoning Map	2.1
23A.16.020	Designation of Districts	2.0
23A.16.030.A	District Boundaries	2.2
23A.16.030.B	Lot Divided by Zoning Boundary	15.10
23A.16.030.E	Classification of Vacated Streets	2.5
23A.20.020.B	When Text is being Amended	17.2(d)
23A.20.020-080	Reclassification of Property	21
23A.24.030	Interpretation	27
23A.24.030.A	Applicability to Other Agencies	1.1
23A.24.030.C	Emergency Uses	16.7
23A.24.030.E	Constitutionality	28
23B.04	Zoning Adjustments Board	18.0
23B.04.020	Zoning Adjustments Board Powers	18.1
23B.08	Design Review Committee	15A.4
23B.08.010.A	Membership	15A.4(a)
23B.08.010.B	Responsibility and Powers	15A.4(c)
23B.16.100.C	Abandonment	20.3(c)
23B.20.040	Zoning Permits (renamed Zoning Certificates)	17.0
23B.20.050.A	Application Fee and Issuance	17.1
23B.20.050.B	When Use Permits Apply	17.2(a)
23B.24.020	Application, Fee	20.0
23B.24.060	Neighborhood Organizations	19.3(e)
	Administrative Use Permits	
23B.28.010.B	Issuance; second paragraph	20.1
23B.28.030	Issuance; paragraphs 32-33	20.1
23B.28.060	Appeals	20.4
	Use Permits	
23B.32.010	Issuance; first paragraph	20.1
23B.32.020.B	Paragraph 34 (Use Permit Notice)	20.1
23B.32.020.C	Posting Requirements	19.3(a)

Title 23: APPENDIX B

Table Relating Ordinance Sections: New
Ordinance to Old Ordinance Table

<u>New Section</u>	<u>Description</u>	<u>Old Section</u>
23B.32.020.D	Mailing Requirements	19.3(b)
23B.32.020.D	Extension of Time	19.3(c)
23B.32.030	Conduct of Hearings	19.4
23B.32.040.A	Findings	20.2
23B.32.050	Notice of Decision	19.5
23B.32.050	Appeals to Council	19.13
23B.32.050.C	Effective Date	19.9
23B.32.050.C	Board Issued Use Permit Appeals	20.5
	Variances	
23B.32.080.A	City Council Notice Requirements	19.3(d)
23B.32.090	Certification by Council	19.6
23B.40	Temporary Uses	19.8
23B.44.010	Power to Grant	19.0
23B.44.020.A	Application, Fee	19.1
23B.44.020.B	Notices	19.3
23B.44.020.C	Public Hearing	19.2
23B.44.040	Conditions to Grant (FINDINGS)	19.7
23B.56	Conditions	20.3(a)
23B.56.020	Review if Change in Character	20.3(e)
23B.56.030	Plans become Conditions	20.3(b)
23B.56.050	Guarantees	20.3(d)
23B.56.090	Resubmittal of Application	20.5-1
23B.56.100	Cessation	19.11
23B.56.100.A	Exercise	19.10
23B.56.100.B	Buildings under Construction	16.6
23B.60	Revocation of Use Permits	20.6
23B.64.010.D	Enforcement	23
23C	General Provisions	15
23C.04.020	Non-conforming Uses and Buildings	16
23C.04.020.A	Non-conforming Use of Buildings	16.1
23C.04.020.B	Non-conforming Lot Size	15.8
23C.04.030	Cessation	16.4(a)
23C.04.050	Continuation	16.0
23C.04.050.A	To Change Non-conforming to Conforming	16.2
23C.04.060.A	Changes of Use	16.5(a)
23C.04.060.B	Extending Non-conforming Use	16.5(b)
23C.04.070.A	Enlarge Non-Conforming Buildings - Conform; ZP	16.5(c)(1)
23C.04.070.B	Enlarge Non-Conforming Buildings - Yards, Height; AUP	16.5(c)(2)
23C.04.070.D	Enlarge Non-conforming Buildings - with Non-conforming Use; UP	16.5(c)(3)
23C.04.090	Destruction of Non-conforming Buildings	16.3

Title 23: APPENDIX B

Table Relating Ordinance Sections: New
Ordinance to Old Ordinance Table

<u>New Section</u>	<u>Description</u>	<u>Old Section</u>
23C.08.030	Conversion of Dwellings	15.1-1
23C.08.030	Purpose	15.1-1(a)
23C.08.030	Requires Use Permit	15.1-1(b)
23C.08.030	Residential Conversion Findings	15.1-1(c)
23C.08.030.B	Paragraph 29 (Ref: 15.1-1)	20.1
23C.08.040	Residential Hotel Rooms	15.1-2
23C.08.040.A	General Conversion Requirements	15.1-2(B)
23C.08.040.A	Permitted Conversions	15.1-2(C)
23C.08.040.B	Exchange of Rooms	15.1-2(D)
23C.08.050	Demolition of Non-residential Structure	15.1-3
23C.08.050.A	Requires Use Permit	15.1-3(b)
23C.08.050.B.	Paragraph 30 (Comm Acc Bldg Demo)	20.1
23C.08.050.C	LPC Review if 40+ Years Old	15.1-3(d)
23C.08.060.D	Relocation of Buildings	15.5
23C.08.070	Unsafe Building Exempted	15.1-3(c)
23C.12	Inclusionary Housing	15B
23C.12.010	Purpose	15B.2
23C.12.030	Applicability of Regulations	15B.0
23C.12.030	General Inclusionary Requirements	15B.5
23C.12.030.A	Required 20% of Units	15B.5(a)
23C.12.040.B	Written Agreement	15B.6
23C.12.040.E	In-lieu Participation Fees	15B.12
23C.12.040.F	General Construction Requirements	15B.7
23C.12.050	State Density Bonus	15B.5(b)
23C.12.060	Rental Housing Requirements	15B.8
23C.12.070	Ownership Requirements	15B.9
23C.12.070.C	Purchaser Restrictions	15B.10
23C.12.070.D	Control of Re-sale	15B.11
23C.12.080	Avenues Plan Requirements	15B.13
23C.12.090	Designated Implementing Authority	15B.4
23C.20.010.A	Exemptions Renting to 4 or fewer persons	15.1(a)(1)
23D.04.020	Height	15.2
23D.04.020.A	Public Buildings	15.2(a)
23D.04.020.B	Towers, Poles, Chimneys	15.2(b)
23D.02.030	Yards	15.3
23D.04.030	Measurement Point	15.3(a)
23D.04.030.A	Minimum Side Yard of 3 Feet	15.3(b)
23D.04.030.A	Architectural Features	15.3(a)(1)
23D.04.030.C	Attached to Main Building	15.3(d)
23D.04.030.D	No Side Yards on Adjacent Lots	15.3(h)
23D.04.030.E	Separation of Buildings	15.4

Title 23: APPENDIX B

Table Relating Ordinance Sections: New
Ordinance to Old Ordinance Table

<u>New Section</u>	<u>Description</u>	<u>Old Section</u>
23D.04.030.F	Subterranean Structures	15.3(g)
23D.04.030.G	Solar Equipment Exception	15.3(i)
23D.04.040	Coverage	15.11
23D.04.050	Usable Open Space	15.14, 22.19-1
23D.04.060	Screening Garbage Cans, Meters	15.15
23D.04.070	Pedestrian Walkway	15.13
23D.08	Accessory Buildings	15.3(c)
23D.08.030	Height	15.2(c)
23D.08.040	Accessory Buildings Setbacks	15.3(c)(1)
23D.08.070.A.2	Height of Fences	15.7
23D.12	Parking Requirements	15.6
23D.12.010	Purpose	15.6(a)
23D.12.020	Applies to Certain Actions	15.6(b)
23D.12.020.C	Permit Conformance	15.6(d)
23D.12.030.B	300 Foot Radius	15.6(j)
23D.12.040	Traffic Engineer Determination	15.6(p)
23D.12.040.D 4	Parking in Yards: Screening Requirements	15.6(q)
23D.12.050	Rounding	15.6(g)
23D.12.060	Joint Use Parking Allowed	15.6(n)
23D.12.060.B	Offices in R-4 and R-5 Districts	15.6(o)
23D.12.070	Calculations when Two Uses	15.6(f)
23D.12.080.A	10 Foot Rule from Doors/Windows	15.6(r)
23D.12.090	Parking Lot Standards for R- Districts	15.1(b)
	Residential Districts	
23D.16	R-1 District	5
23D.20	R-1A District	5A
23D.24	ES-R District	5B
23D.28	R-2 District	6
23D.32	R-2A District	6A
23D.36	R-3 District	7
23D.40	R-4 District	8
23D.44	R-5 District	8A
23E.08	Design Review	15A
23E.08.010	Purpose and Intent	15A.3(a)-(c)
23E.08.010.C	Excludes Land Use	15A.2(c)
23E.08.020	Applicability	15A.2
23E.08.020.A	Non-residential Districts	15A.2(a)
23E.08.020.B	Exterior Construction/Permits	15A.2(b)
23E.08.020.B	Scope	15A.2(d)
23E.12.010.A	Application Requirements	15A.1(c)
23E.12.010.B	Fees	15A.1(g)
23E.12.020	LPC/Staff Responsibilities	15A.1(e)

Title 23: APPENDIX B

Table Relating Ordinance Sections: New
Ordinance to Old Ordinance Table

<u>New Section</u>	<u>Description</u>	<u>Old Section</u>
23E.12.020.C	Building Permit Conformance	15A.1(f)
23E.12.030	Time Limits: 60 Days	15A.1(h)
23E.12.040	Types of Review	15A.1(a)
23E.12.040.A	Staff Review	15A.1(b)
23E.12.050.A	Continued Date	15A.1(d)
23E.12.050.A	Meetings - No Public Hearings	15A.4(b)
23E.16.030	Adult-oriented Businesses	15.16
23E.16.050	Amusement Device Arcades	15.1(e) 2nd Par
23E.20	Live/Work Units	15.17
23E.24	Sidewalk Cafe Seating	15.19
23E.28.050.F	Employees per Shift	15.6(i)
23E.32	Location and Dimension Standards	15.6-1(e)
23E.32.010	Off-Street Loading Spaces	15.6-1
23E.32.010.D	Not use Off-street Parking Space	15.6-1(b)
23E.32.010.E	Access and Paving Required	15.6-1(d)
23E.32.010.F	Distance from R-District	15.6-1(f)
	Non-residential Districts	
23E.36	C-1 District	9
23E.40	C-N District (formerly C-1A, C-1B, C-1C))	9A, 9B, 9C
23E.44	C-1B(E) District (now C-E)	9D
23E.48	C-1A(NS) District (now C-NS)	9E
23E.52	C-1(SA) District (now C-SA)	9F
23E.56	C-1(T) District (now C-T)	9G
23E.60	C-1A(SO) District (now C-SO)	9H
23E.64	C-W District (West Berkeley Commercial)	-
23E.68	C-2 District	10
23E.72	M District	12
23E.76	MM District	-
23E.80	MU-R District (formerly SI)	
23E.84	MU-LI District	-
23E.88	SP District	12A
23E.92	U District	13
23E.96	H District	14
	Definitions	
23F	Definition of <i>Private Clubs</i>	15.1(h)
23F	Definitions for Inclusionary Housing	15B.3
23C.04.010.D	Definition of <i>Front of Lot of a Corner Lot</i>	15.3(f)
23F	Definitions	22

Provisions Moved from General to Individual District Provisions

Individual Districts	Public Uses, Utilities	15.1(c)
Individual Districts	Mineral Extraction with UP	15.1(d)

Title 23: APPENDIX B

Provisions Moved from General to Individual District Provisions

Individual C- Districts	Commercial Recreation	15.1(e)
Individual C- Districts	Dance Halls	15.1(f)
Individual C- Districts	Cemeteries, Crematories	15.1(g)
Individual C-Districts	Drive-ins	15.1(i)
Individual C- Districts	Standard Required per 10,000 sq. ft.	15.6-1(a)
Individual R-Districts	Standard Required in R- Districts	15.6-1(c)
Individual Districts	Standards for Uses not Listed	15.6(k)
Individual Districts	Residential Parking Standards	15.6(l)
Individual Districts	Other Uses in R- Districts Standards	15.6(m)
Individual Districts	Issuance; Paragraphs 3-28 (List of Administrative Use Permits)	20.1

Summary of Eliminated Old Ordinance Sections
(No New Ordinance Section)

<u>Description</u>	<u>Old Ordinance Number</u>
Reference to Chapter Numbers	1.3
O-R District	8C
C-3 District	11
Alcohol Sales at Gas Stations	15.1(g)
Club Use Standards	15.1(h)(1-6)
Not apply to Other Uses	15.1-1(d)
Daily Log Required	15.1-2(F)
Three Year Review of Residential Hotel Regulations	15.1-2(l)
Private Right of Action	15.1-2(J)
Regulations Reference	15.1-2(G)
Seating Standards	15.6(h)
Review of Ordinance	15A.5
Administrative Regulations	15B.4(b)
Cessation of Adult Uses	16.4(b)
Effect of Change of Districts	16.8
North Shattuck Special Regulations	19.3(f)
Transfer Condition	20.3(a)(3)

Official Zoning Map

of the
City of Berkeley, California

Adopted by the Berkeley City Council on
March 18, 1999 - Ordinance No. 6478-N.S.

ZONING DISTRICTS

R-1	Single Family Residential
R-1A	Limited Two-family Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
ES-R	Environmental Safety-Residential
R-S	Residential High Density Subarea
R-SMU	Residential Mixed Use Subarea

C-DMU	C-DMU Core
C-DMU	C-DMU Outer Core
C-DMU	C-DMU Corridor
C-DMU	C-DMU Buffer

C-1	General Commercial
C-E	Elmwood Commercial
C-N	Neighborhood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-SO	Solano Avenue Commercial
C-T	Telegraph Avenue Commercial
C-W	West Berkeley Commercial
C-AC	Commercial Adeline Corridor

M	Manufacturing
MM	Mixed Manufacturing
MULI	Mixed Use-Light Industrial
MUR	Mixed Use-Residential

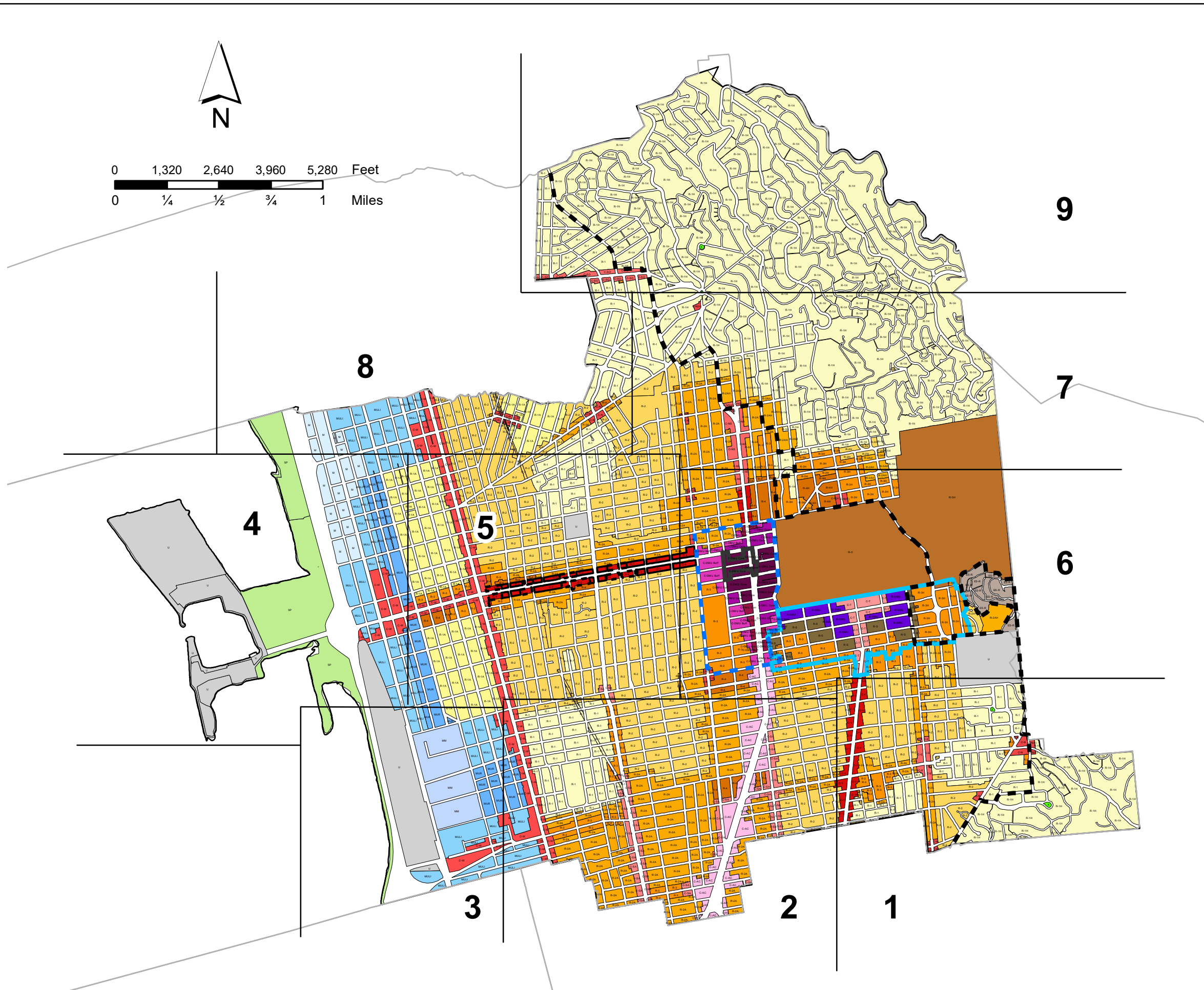
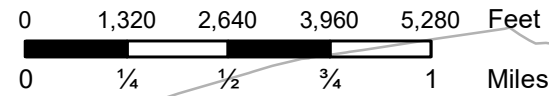
SP	Specific Plan
U	Unclassified

OTHER MAP SYMBOLS

	Hillside Overlay Boundary
	Arts District Overlay
	Southside Plan
	Downtown Area Plan

University Ave Strategic Plan

	Avenue Mixed Use
	UASP Node



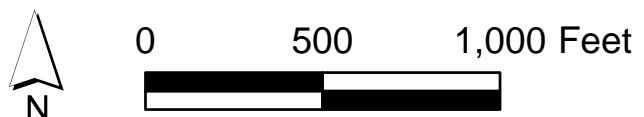
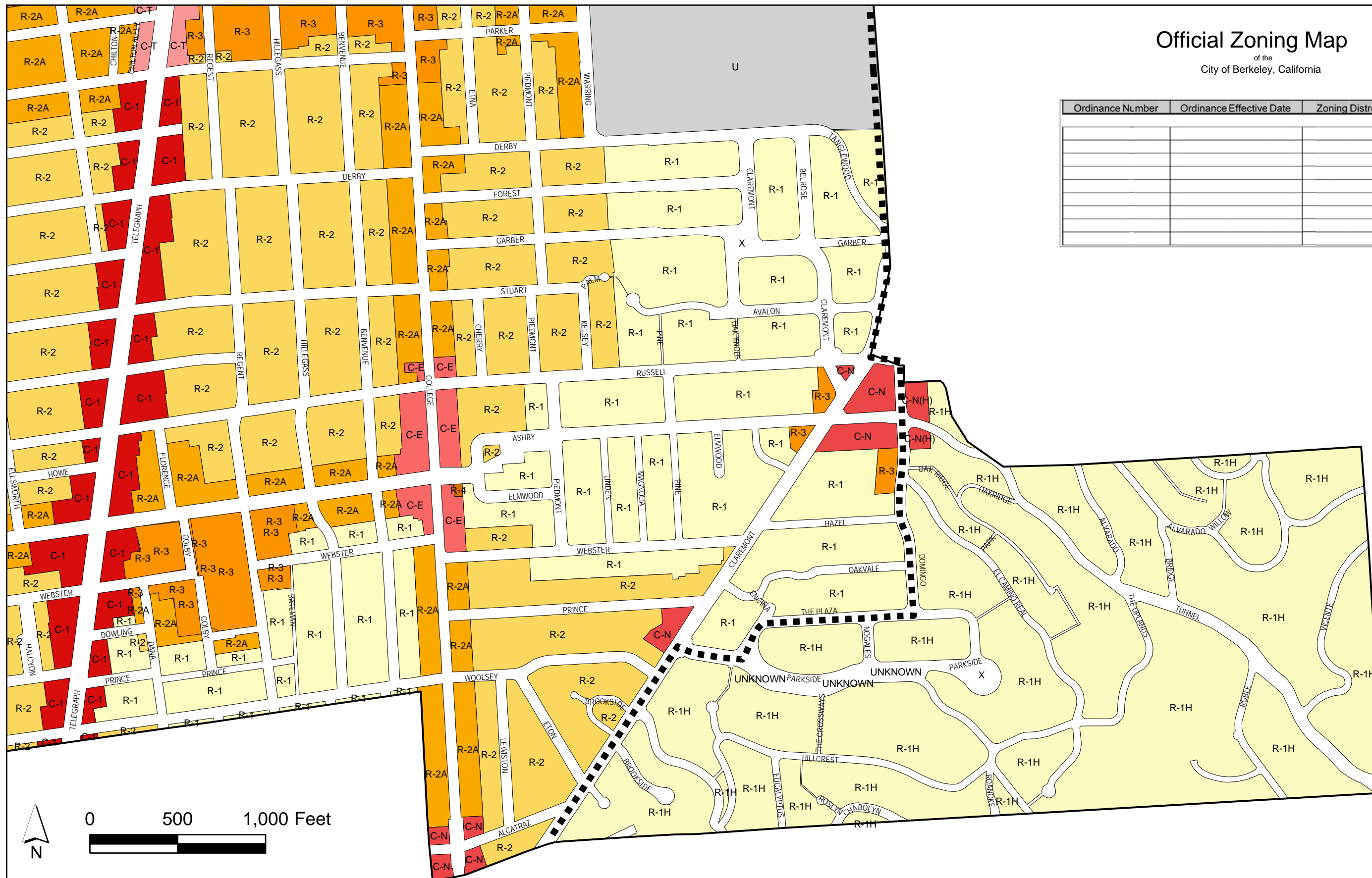
Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected

6

2



Scale = 1:6,500

1

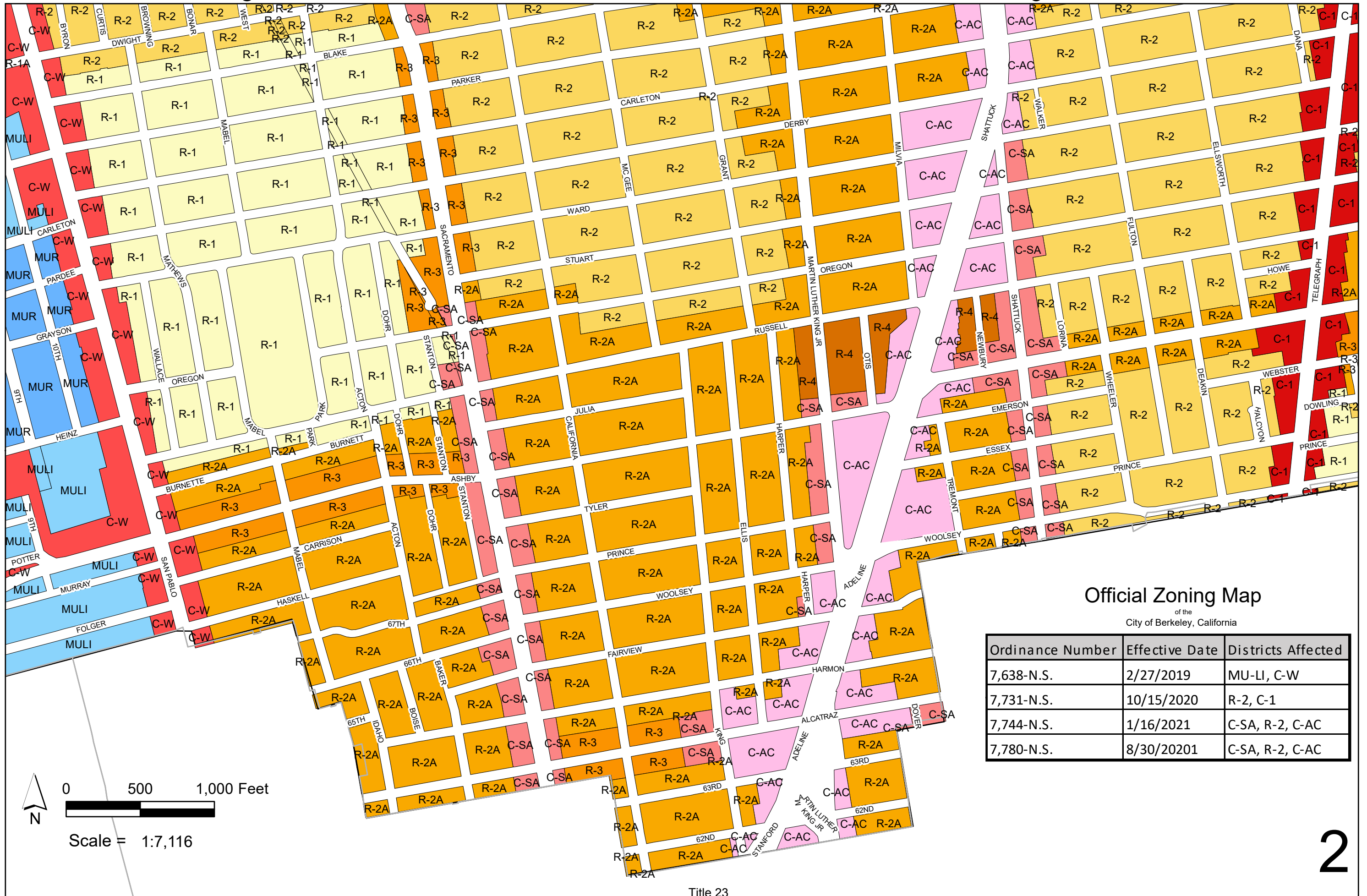
5

6

3

1

2



Official Zoning Map

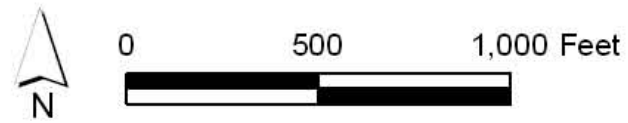
of the
City of Berkeley, California

Ordinance Number	Effective Date	Districts Affected
7,638-N.S.	2/27/2019	MU-LI, C-W
7,731-N.S.	10/15/2020	R-2, C-1
7,744-N.S.	1/16/2021	C-SA, R-2, C-AC
7,780-N.S.	8/30/20201	C-SA, R-2, C-AC

Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
Ord 6923-NS	July 20, 2006	MULI, C-W

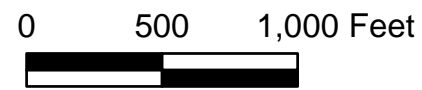


Scale = 1:6,000

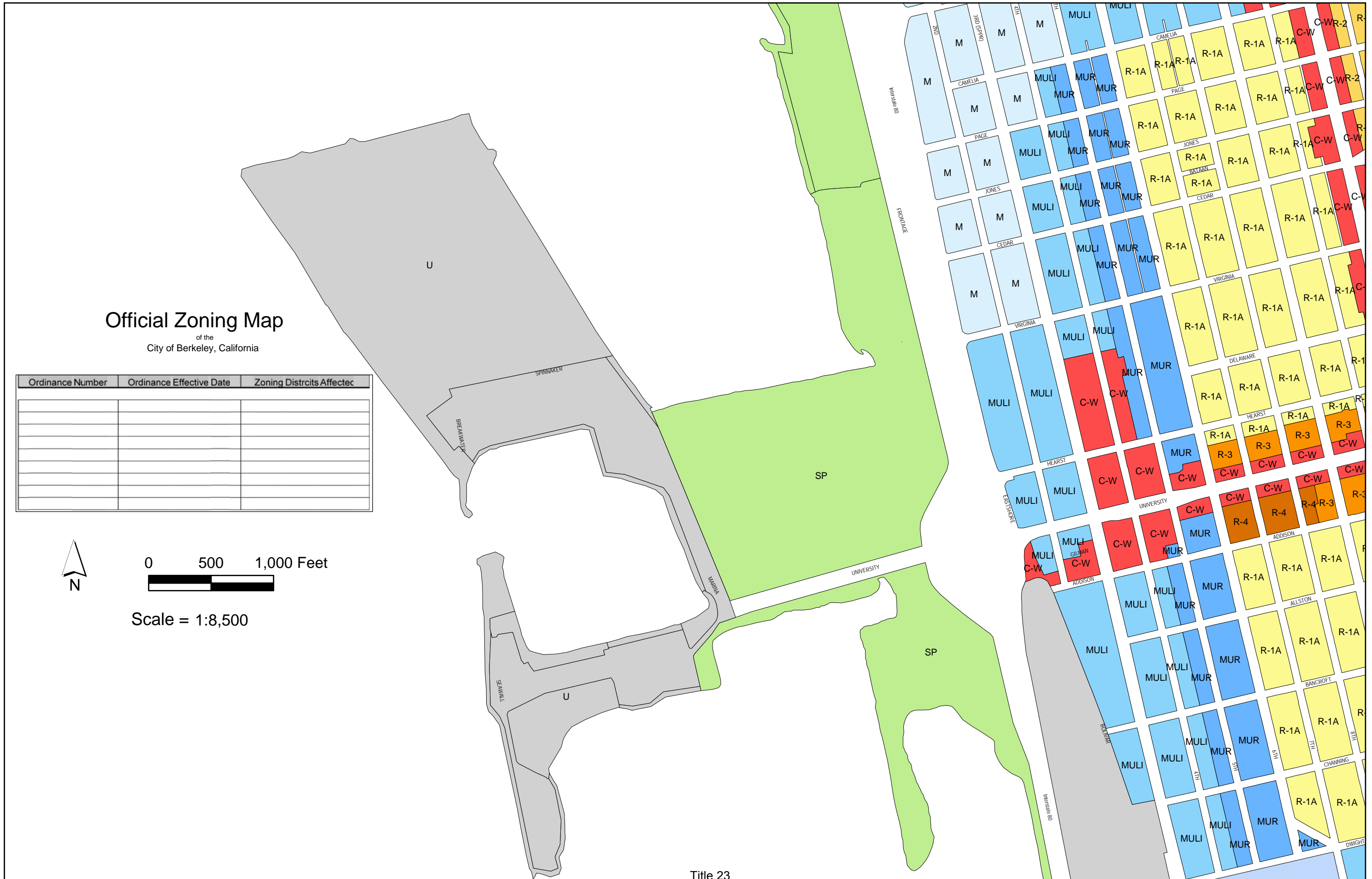


Official Zoning Map of the City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected

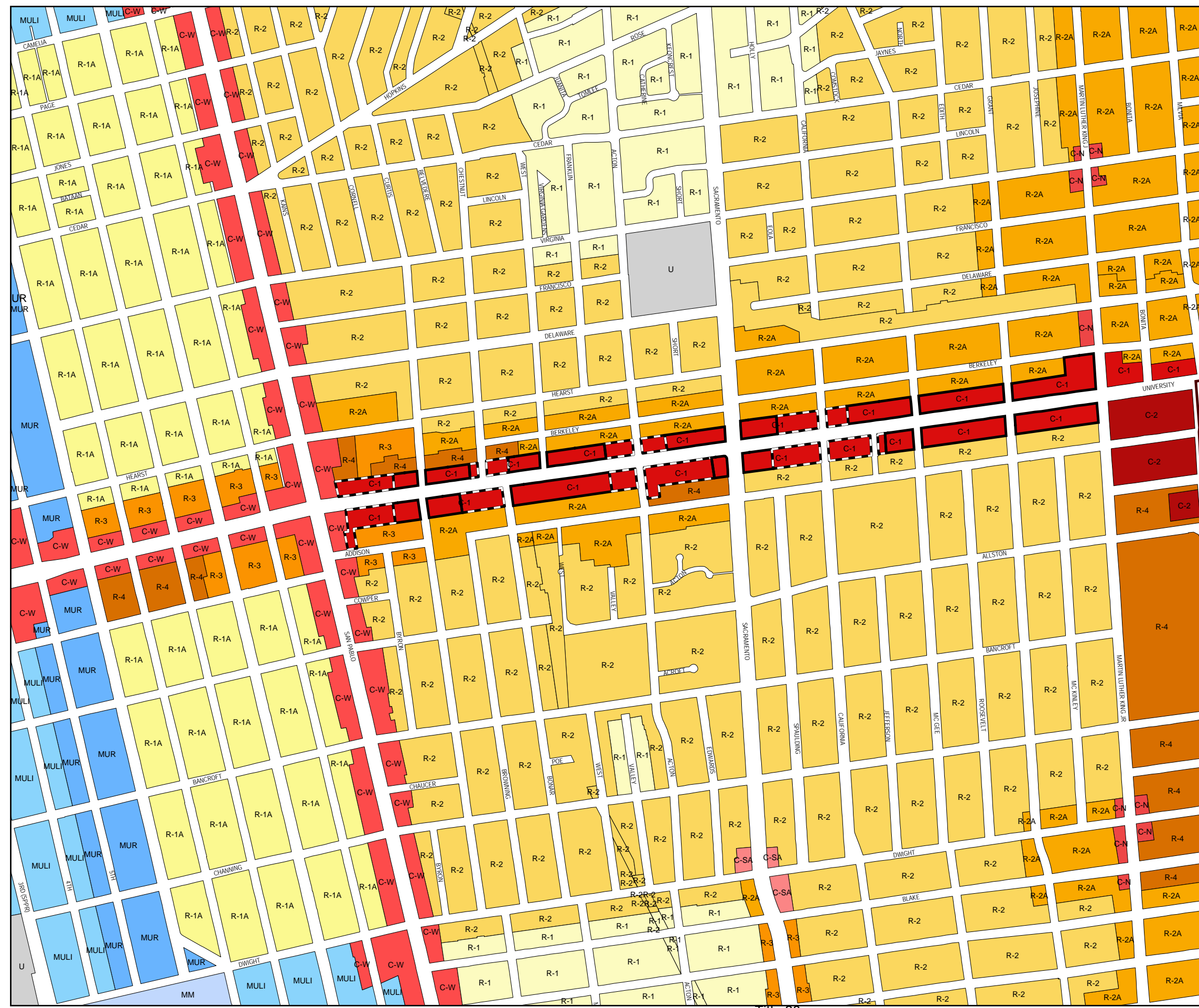


Scale = 1:8,500



8

7



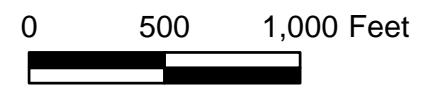
Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
6681-N.S.	April 18, 2002	R - 3
6830-N.S	January 6, 2005	C - 1

4

6



Scale = 1:8,500

3

Title 23

Page 467 - Reprinted 6/16/20

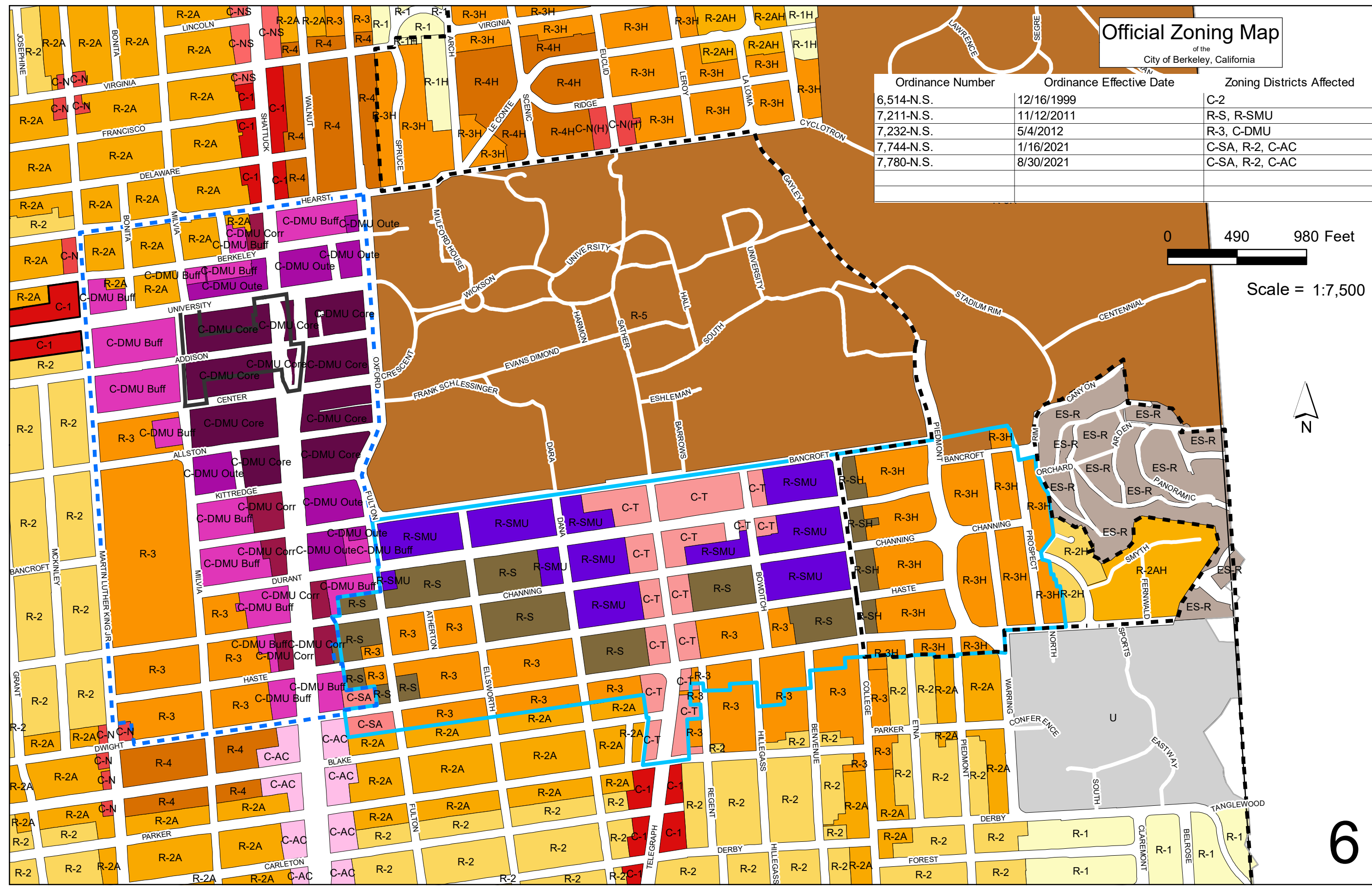
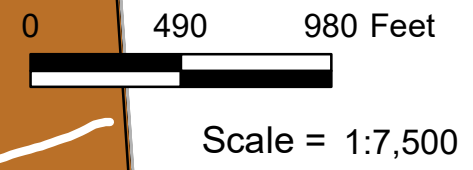
2

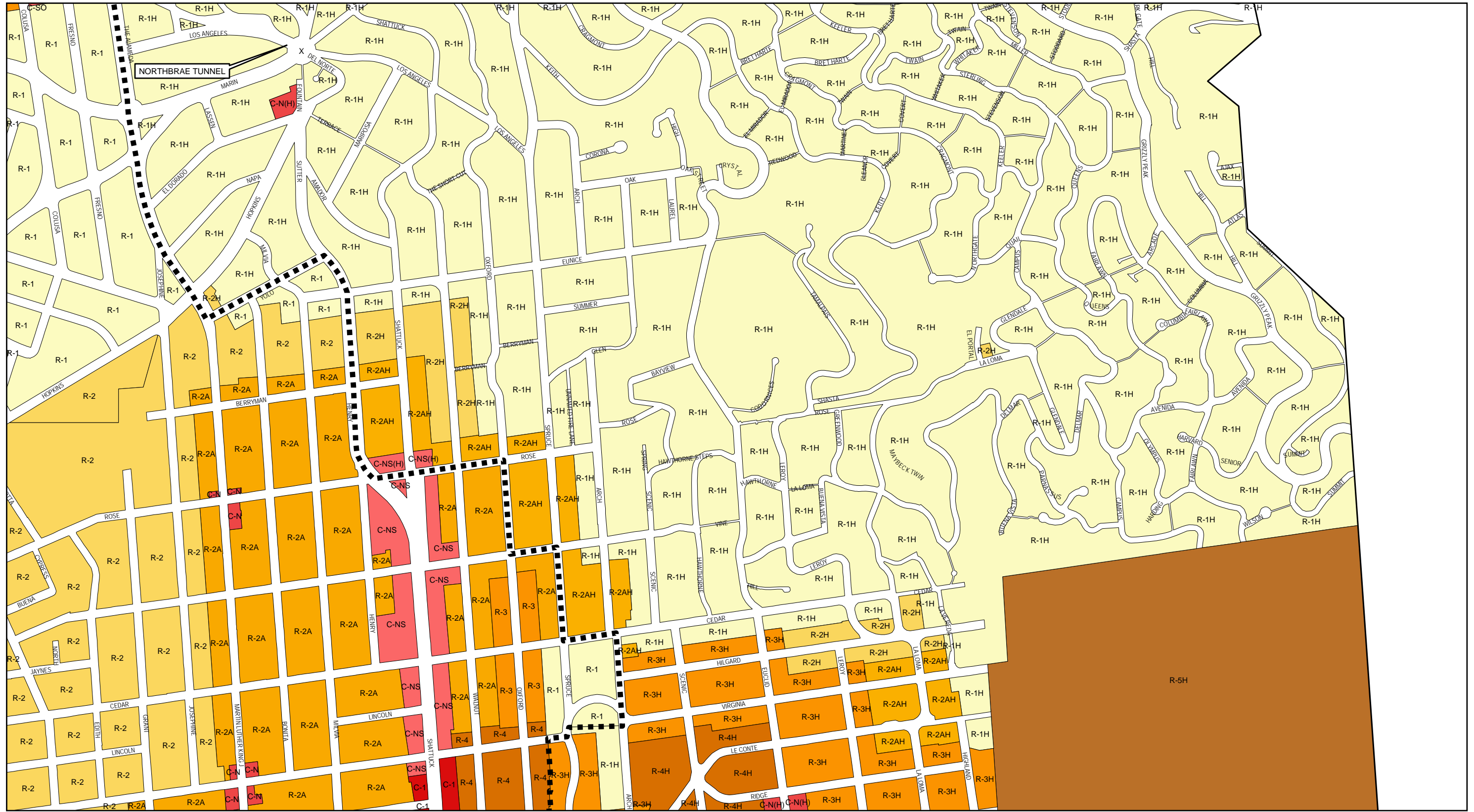
5

Official Zoning Map

of the
City of Berkeley, California

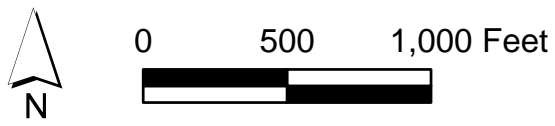
Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
6,514-N.S.	12/16/1999	C-2
7,211-N.S.	11/12/2011	R-S, R-SMU
7,232-N.S.	5/4/2012	R-3, C-DMU
7,744-N.S.	1/16/2021	C-SA, R-2, C-AC
7,780-N.S.	8/30/2021	C-SA, R-2, C-AC





Official Zoning Map
of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected



Official Zoning Map

of the
City of Berkeley, California

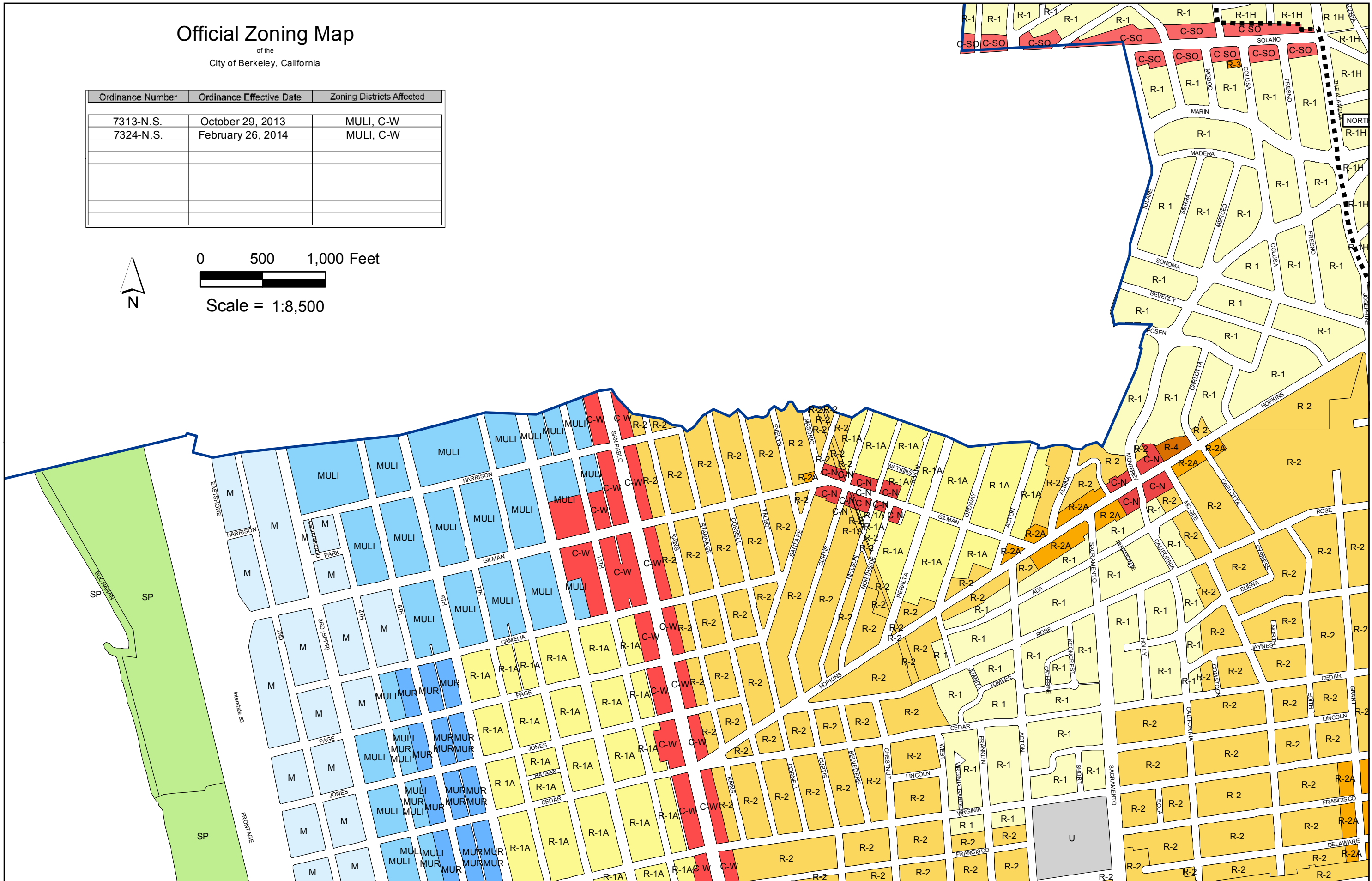
Ordinance Number	Ordinance Effective Date	Zoning Districts Affected
7313-N.S.	October 29, 2013	MULI, C-W
7324-N.S.	February 26, 2014	MULI, C-W



0 500 1,000 Feet



Scale = 1:8,500



Official Zoning Map

of the
City of Berkeley, California

Ordinance Number	Ordinance Effective Date	Zoning Districts Affected



0 500 1,000 Feet



Scale = 1:9,000

