

ORDINANCE NO. 8,007-N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), GENERAL DEVELOPMENT STANDARDS CHAPTER (23.304), ACCESSORY DWELLING UNIT CHAPTER (23.306), PARKING AND LOADING CHAPTER (23.322), DENSITY BONUS CHAPTER (23.330), APPEALS AND CERTIFICATIONS CHAPTER (23.410), AND GLOSSARY CHAPTER (23.502) TO CONFORM TO STATE LAW, CORRECT ERRORS, CLARIFY LANGUAGE, AND CODIFY EXISTING PRACTICE

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

Section 1. That line “Multi-Family” within “Residential Uses” in Table 23.202-1 Allowed Land Uses In Residential Districts within BMC Chapter 23. 202.020 is amended to read as follows:

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply **Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150(A) and 23.202.150(D).	RESIDENTIAL DISTRICTS										USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU**	
Residential Uses											
Multi-Unit Residential	ZC	NP	ZC	ZC	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.302.070(H)

Section 2. That Table 23.202-2 R-1 Development Standards within BMC Chapter 23.202.050 is amended to read as follows:

Table 23.202-2: R-1 Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area for New Lots, Minimum	5,000 sq. ft.	23.304.020 – Lot Requirements
Usable Open Space per 1,000 sq. ft. Residential Floor Area Minimum	150 sq. ft.	23.304.090 – Usable Open Space
Floor Area Ratio, Maximum	No Maximum	
Main Building Height		23.304.050 – Building Height
New Buildings and Additions	35 ft. and 3 stories [1]	
Within 15 ft. of Rear Property Line	22 ft.	
Residential Density (du/acre)		23.106.100 – Residential Density
Minimum	10	
Maximum	70	
Lot Line Setbacks, Minimum		23.304.030 -- Setbacks
Front	5 ft. [2]	
Rear	5 ft. [2]	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation, Minimum	5 ft.	
Lot Coverage, Maximum	60%	23.304.120 – Lot Coverage
<p>Notes:</p> <p>[1] A project that includes a pitched roof is permitted a 35-foot maximum eave height and a maximum roof height of 38 feet. A project with a 35-foot flat roof is permitted an additional 5 feet height allowance for a stair, elevator or other rooftop access feature. Such a feature shall not exceed 15% of the average floor area of all of the building's stories.</p> <p>[2] Front and rear setbacks must add up to at least 20 feet.</p>		

Section 3. That Table 23.202-5 R-2 Development Standards within BMC Chapter 23.202.080 is amended to read as follows:

Table 23.202-5: R-2 Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area for New Lots, Minimum	5,000 sq. ft.	23.304.020 – Lot Requirements
Usable Open Space per 1,000 sq. ft. Residential Floor Area Minimum	150 sq. ft.	23.304.090 – Usable Open Space
Floor Area Ratio, Maximum	No Maximum	
Main Building Height		
New Buildings and Additions	35 ft. and 3 stories [1]	23.304.050 – Building Height
Within 15 ft. of Rear Property Line	22 ft.	
Residential Density (du/acre)		
Minimum	10	23.106.100 – Residential Density
Maximum	70	
Lot Line Setbacks, Minimum		
Front	5 ft. [2]	23.304.030- Setbacks
Rear	5 ft. [2]	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation, Minimum	5 ft.	
Lot Coverage, Maximum	60%	23.304.120—Lot Coverage

Notes:

[1] A project that includes a pitched roof is permitted a 35-foot maximum eave height and a maximum roof height of 38 feet. A project with a 35-foot flat roof is permitted an additional 5 feet height allowance for a stair, elevator or other rooftop access feature. Such a feature shall not exceed 15% of the average floor area of all of the building's stories.

[2] Front and rear setbacks must add up to at least 20 feet.

Section 4. That Table 23.202-9 R-2A Development Standards within BMC Chapter 23.202.090 is amended to read as follows:

Table 23.202-9: R-2A Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area for New Lots, Minimum	5,000 sq. ft.	23.304.020—Lot Requirements
Usable Open Space per 1,000 sq. ft. Residential Floor Area Minimum	150 sq. ft.	23.304.090-Usable Open Space
Floor Area Ratio, Maximum	No Maximum	
Main Building Height		23.304.050—Building Height
New Buildings and Additions	35 ft. and 3 stories [1]	
Within 15 ft. of Rear Property Line	22 ft.	
Residential Density (du/acre)		23.106.100 – Residential Density
Minimum	10	
Maximum	70	
Lot Line Setbacks, Minimum		23.304.030--Setbacks
Front	5 ft. [2]	
Rear	5 ft. [2]	
Interior Side	4 ft.	
Street Side		4 ft.
Building Separation, Minimum	5 ft.	
Lot Coverage, Maximum	60%	23.304.120—Lot Coverage
<p>Notes:</p> <p>[1] A project that includes a pitched roof is permitted a 35-foot maximum eave height and a maximum roof height of 38 feet. A project with a 35-foot flat roof is permitted an additional 5 feet height allowance for a stair, elevator or other rooftop access feature. Such a feature shall not exceed 15% of the average floor area of all of the building's stories.</p> <p>[2] Front and rear setbacks must add up to at least 20 feet.</p>		

Section 5. That BMC Section 23.206.030(A) is amended to read as follows:

A. New Floor Area. A project that creates new floor area for any use requires additional permits as shown in Table 23.206-2. Creation of new floor area includes:

1. Construction of new main buildings or accessory buildings;
2. Additions to existing buildings; or
3. The installation of new floor or mezzanine levels within or onto existing buildings.
4. New floor area does not include floor area associated with residential uses in the MU-R zoning district.

Table 23.206-2. NEW FLOOR AREA PERMIT REQUIREMENTS

District/New Gross Floor Area	Permit Required for New Floor Area
M, MM	
Less than 20,000 sq. ft.	ZC
20,000 to less than 40,000 sq. ft.	AUP
40,000 sq. ft. or more	UP(PH)
M-RD	
Less than 60,000 sq. ft.	ZC
60,000 to less than 100,000 sq. ft.	AUP
100,000 sq. ft. or more	UP(PH)

District/New Gross Floor Area	Permit Required for New Floor Area
MU-LI	
Less than 10,000 sq. ft.	ZC
10,000 to less than 20,000 sq. ft.	AUP
20,000 sq. ft. or more	UP(PH)
MU-R	
Less than 5,000 sq. ft.	ZC
5,000 to less than 10,000 sq. ft.	AUP
10,000 sq. ft. or more	UP(PH)

Section 6. That BMC Section 23.206.030(C) is amended to read as follows:

C. Major Residential Additions.

1. Where Allowed/Required Permits.
 - (a) Major residential additions are not permitted in MU-LI district.
 - (b) Major residential additions in the M and MM districts are subject to the requirement in Section 23.324 (Nonconforming Uses, Structures, and Buildings).
2. **Recorded Acknowledgement.** For a residential addition in the MU-R district, the residential property owner shall record an acknowledgement on the title that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.

Section 7. That BMC Section 23.206.060(E) be amended to read as follows:

E. Permit Findings. See Section 23.206.110-Permit Findings

Section 8. That BMC Section 23.206.070(E) be amended to read as follows:

E. Permit Findings. See Section 23.206.110-Permit Findings

Section 9. That BMC Section 23.206.080(F) be amended to read as follows:

F. Permit Findings. See Section 23.206.110-Permit Findings

Section 10. That BMC Section 23.206.090(E) be amended to read as follows:

E. Permit Findings. See Section 23.206.110-Permit Findings

Section 11. That Table 23.206-14 MU-R Development Standards within BMC Chapter 23.206.090 is amended to read as follows

Table 23.206-14: MU-R Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020 – Lot Requirements
New Lot	No minimum	
Per Live/Work Unit	1,250 sq. ft.	
Lot Width, Minimum	40 ft.	
Usable Open Space, Minimum		23.304.090 – Usable Open Space
Per 1,000 sq. ft. of gross residential floor area	150 sq. ft.	
Per Live/Work Unit	40 sq. ft.	
Floor Area Ratio, Maximum, Non-Residential	1.5 [1]	23.106.050 - Floor Area Ratio
Residential Density (DU/acre)		23.106.100 – Residential
Minimum	20	

Maximum	70	Density
Main Building Height, Maximum		23.304.050 - Building Height
Live/work	28 ft. and 3 stories [2]	
Residential or mixed-use [3]	35 ft. or 3 stories [4]	
Within 15 ft. of rear property line	22 ft.	
All other uses	35 ft. and 2 stories [5]	
Lot Line Setbacks, Minimum		23.304.030 – Setbacks
Front	5 ft.	
Rear	No minimum [6]	
Interior Side	No minimum	
Street Side	5 ft.	
Building Separation, Minimum	5 ft.	
Lot Coverage, Maximum	No maximum.	
<p>Notes:</p> <p>[1] Maximum 1.5 for buildings with 50 percent or more live/work floor area</p> <p>[2] Maximum 35 ft. with a Use Permit.</p> <p>[3] Mixed use is defined here as a building with 50 percent or more of gross floor area used for residential (including live/work) purposes.</p> <p>[4] A project that includes a pitched roof is permitted a 35-foot maximum eave height and a maximum roof height of 38 feet. A project with a 35-foot flat roof is permitted an additional 5 feet height allowance for a stair, elevator or other rooftop access feature. Such a feature shall not exceed 15% of the average floor area of all of the building's stories.</p> <p>[5] Maximum 3 stories for arts/craft studios and light manufacturing (with no other non-residential uses) on a block without dwelling units.</p> <p>[6] Minimum 5 ft. if rear of lot abuts a street.</p>		

Section 12. That BMC Section 23.206.090(B)(7) is amended to read as follows:

7. *Mixed-Use Residential.* To approve an AUP or Use Permit to establish or expand a mixed-use residential building in the MU-R district, the review authority must find that the specific combination of proposed residential and non-residential uses will

not be hazardous or detrimental to persons living and/or working on the site or within the project vicinity.

Section 13. That BMC Section 23.304.100(D)(1) is amended to read as follows:

1. All multi-unit dwellings shall have an unobstructed walkway for pedestrian access from the public right-of-way to the building.

Section 14. That BMC Section 23.306.030(A)(2) is amended to read as follows:

2. Duplex or Multi-Unit Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of an existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).

Section 15. That BMC Section 23.306.040(C)(4) is amended to read as follows:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.040(D) ADUs Developed by a Qualified Nonprofit Developer are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU or the Single Family Dwelling in which the Junior ADU is located shall be owner-occupied. Owner-occupancy shall not be required if the JADU and the Single Family Dwelling do not share sanitation facilities, or if the owner is another governmental agency, land trust, or housing organization.

Section 16. That BMC Section 23.322.040(D)(2) is amended to read as follows:

2. **Offices in R-4 and R-5 Districts.** The ZAB may approve a Use Permit to allow offices in the R-4 or R-5 district to share parking spaces with a multi-unit residential use. To approve the Use Permit, the ZAB must find that:

- (a) No more than 20 percent of the off-street parking spaces required for the multiple dwelling use will serve as required off-street parking for offices; and
- (b) The shared off-street parking spaces are located on the same lot as the offices that they serve or are on property under the same ownership within 300 feet from the offices.

Section 17. That BMC Section 23.322.050(A)(6)(c) is amended to read as follows:

- (c) Eligible Uses: Any commercial use portion of a mixed-use building which combines retail products stores and/or personal household services and multi-unit residential uses within the same building or located on the same lot (or contiguous lots as part of the same project).

Section 18. That line “R-1, R-1A, R-2” in Table 23.322-12 Land Uses Requiring Off-Street Loading Spaces within BMC Chapter 23.322.100 is amended to read as follows

District	Land Use [1]
R-1, R-2	Schools 10,000 sq. ft. or more

Section 19. That BMC Section 23.326.070(C) is amended to read:

C. Landmarks Preservation Commission Review.

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.

- a. *Exception.* Projects that are vested pursuant to SB 330 shall be exempt from demolition review.

Section 20. That BMC Section 23.330.030(B) is deleted:

B. Documentation Supporting Requests. The City may request reasonable documentation from the applicant to support requested incentives/concessions.

Section 21. That title “Regulatory Agreements” for BMC Section 23.330.080 is amended to read as follows:

23.330.080 Regulatory Agreements (Density Bonus)

Section 22. That line “Staff-level Design Review” in Table 23.410-2 Appeal Subjects and Review Authority within BMC Chapter 23.410.020 is amended to read as follows

Table 23.410-1: Appeal Subjects and Review Authority

ACTION	ORDINANCE SECTION	MAY BE APPEALED BY	IS APPEALED TO	MUST BE FILED WITHIN
Staff-level Design Review	23.406.070	Any person	DRC	14 days of posting the Notice of Design Review

Section 23. That BMC Section 23.502.020(A) be amended to read as follows:

4. *Accessory Dwelling Unit.* An attached or detached secondary dwelling unit that is located on the same lot as a proposed or existing single family dwelling, duplex, multi-unit dwelling use, or group living accommodation and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(a) *Junior Accessory Dwelling Unit (Junior ADU).* A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit’s attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling.

Section 24. That BMC Section 23.502.020(M)(17) is amended to read as follows:

17. *Multi-Unit Dwelling.* A building, group of buildings, or portion of a building used or designed as two or more dwelling units.

Section 25. That BMC Section 23.502.020(R)(15) is amended to read as follows

15. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores, variety stores and vehicle parts stores. This use excludes video rental stores, service of vehicle parts, and firearm/munition sales.

Section 26. That BMC Section 23.502.020(S)(31) is amended to read as follows

31. **Structure.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is a structure for the purposes of this chapter.
- a. **Accessory Structure.** A detached structure, other than an accessory building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential accessory structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential accessory structures include, but are not limited to, storage buildings, garages, sheds and other outbuildings.
 - b. **Subterranean Structure.** A roofed structure constructed underground, with no building stories aboveground, of which the roof does not exceed 3 feet above the pre-existing grade. Such structures are either separated from a building or connected to a building only by a passageway or hallway with no openings to finished grade except for a doorway.
 - c. **Temporary Structure.** A tent, tent-house, trailer, mobile office, mobile home or other movable structure or other temporary structure whose construction does not require a building permit.
 - d. **Unenclosed Accessory Structure.** An accessory structure that does not have a roof, and/or does not have walls on more than two sides. Unenclosed accessory structures include, but are not limited to, pergolas, trellises, shade structures, arbors, retaining walls, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses and windmills.

Section 27. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 28, 2026, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

