



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: June 7, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

RECOMMENDATION

Following the May 3, 2023 Planning Commission meeting, the Planning Commission is asked to conduct a public hearing to: 1) discuss additional state law and non-substantive technical edits to the Berkeley Municipal Code (BMC) zoning amendments required to align with state laws related to special needs housing, employment housing, family day care, and parking; and 2) make a recommendation to City Council to approve the proposed revised Zoning Ordinance amendments (**Attachment 1**), which contains the recommended amendments from the May 3, 2023 Planning Commission meeting as well as additional clarifications and technical edits.

The amendments to the BMC are listed below. Bolded items are added or clarified sections subsequent to the May 3, 2023 Planning Commission meeting.

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- **23.206.050 Protected Industrial Uses**
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)

- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- **23.304.030 Setbacks**
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- **23.324.050 Nonconforming Structures and Buildings**
- **23.502.020 Glossary**

SUMMARY

In response to recent changes in housing-related state laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with state law requirements for special needs and employment housing, family day care homes, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

BACKGROUND

On May 3, 2023, staff presented to the Planning Commission proposed Zoning Ordinance amendments required for compliance with recently approved state laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance. Staff is returning to clarify and include additional technical edits identified since the May 3, 2023 meeting.

DISCUSSION

The Planning Commission Staff Report for May 3, 2023 includes a summary of state law requirements and also non-substantive technical edits identified by staff, community members, and the Zoning Officer. Each section provides a brief summary and references a summary table that includes the Zoning Ordinance section and the proposed changes (**Attachment 2 and 3**). The sections below provide a summary of the additional proposed clarifications and technical edits.

Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by state law, a residential use and prohibits the requirement of a business license. Staff identified an additional reference to family day care home within the "Protected Non-Industrial Uses" table in the MU-LI and MU-R districts. Proposed amendments remove reference to family day care home as a protected use because family day care home is considered a residential use under state law.

Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

“A Housing First, low barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Local jurisdictions shall not prohibit additional flexibility in low barrier shelters, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones where multifamily and mixed-use development is permitted, including nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

At the May 3, 2023 meeting, staff originally proposed a definition of “low barrier navigation center” that replicated the state law definition. Upon further research of the definition used in adjacent jurisdictions, staff propose an amended definition that uses common language and provides an explanation of technical terms used in the state law definition. The clarified definition is intended to be easier to understand and administer.

Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with state law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. In addition to the technical edits recommended by Planning Commission at the May 3, 2023 meeting, staff propose adding the following technical edits:

- **Allowed Building Projections.** If all criteria are met¹, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent to other similar features such as stairs, decks, and porches, and clarifies development requirements for accessibility features. Following the May 3, 2023 meeting, staff identified an error that would limit preferred designs to the interior side or rear setback, instead of all setback areas. The proposed amendment corrects this error.

¹ <https://berkeley.municipal.codes/BMC/23.406.090>

- **Protected Industrial Uses.** The MU-R Zoning District in the old Zoning Ordinance did not include protected industrial uses but nevertheless incorrectly included findings for change of use from industrial uses (manufacturing, warehousing and wholesale).² Staff propose to remove the protected industrial uses from the MU-R Zoning District which include change of use findings for protected industrial uses.
- **Nonconforming Uses, Structures and Buildings.** The old Zoning Ordinance allowed for both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed to be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles which inadvertently resulted in additional permitting requirements for *conforming* projects. The proposed changes correct this error by adding “conforming” back into the section’s headers and titles.

ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that the proposed zoning ordinance amendments related to housing are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to family day care home, parking, and technical edits do not constitute a project under the requirements of the California Environmental Quality Act (CEQA) because they have no potential for resulting in a physical change to the environment. If the ordinance is found to be a project under CEQA, they are subject to the CEQA “Common Sense Exemption” contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

NEXT STEPS

Upon receiving further public comment and Planning Commission recommendation, staff will forward the proposed revised draft Zoning Ordinance to City Council for consideration and adoption.

ATTACHMENTS

1. Draft Ordinance – Zoning Ordinance Amendments
2. Planning Commission Staff Report, May 3, 2023
3. Reference Matrix – Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits
4. Public Hearing Notice

² The original error in the old Zoning Ordinance likely occurred as a result of mimicking the findings and formatting for MM and MU-LI Districts.

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS (SUPPLEMENTAL USE REGULATIONS) (BMC 23.302.070), GENERAL DEVELOPMENT STANDARDS CHAPTER (BMC 23.304), EMERGENCY SHELTERS CHAPTER (BMC 23.308), PARKING AND LOADING CHAPTER (BMC 23.322), NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.342), AND GLOSSARY (BMC 23.502.020) FOR CONSISTENCY WITH STATE LAW RELATED TO SPECIAL NEEDS AND EMPLOYMENT HOUSING, FAMILY DAY CARE HOME, PARKING, AND ASSOCIATED TECHNICAL EDITS

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

Section 1. That the following lines under the category “Public and Quasi-Public Uses” in Table 23.202-1 (Allowed Land Uses in Residential Districts) within Berkeley Municipal Code 23.202.020 are amended, added, or removed: “Emergency Shelter” is hereby amended, the lines “Emergency Shelter, more than 15 beds”; “Low Barrier Navigation Center” and “Supportive Housing” are hereby added, and the lines “Family Day Care Home, Large” and “Family Day Care Home, Small” are hereby removed to read as follows:

Table 23.202-1: Allowed Land Uses in Residential Districts

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	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU*		
Public and Quasi-Public Uses													
Emergency Shelter, <u>15 beds or fewer</u>	NP	NP	NP	NP	NP	NP	See 23.	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	23.308 - Emergency Shelters	

							308 <u>ZC</u>					
<u>Emergency Shelter, more than 15 beds</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	
Family Day Care Home, Large	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	
Family Day Care Home, Small	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	ZC -	
<u>Low Barrier Navigation Center</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	
<u>Supportive Housing</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>23.302.070.1</u> <u>- Supportive</u> <u>Housing</u>

Section 2. The Berkeley Municipal Code Table 23.202-14 is amended to read as follows:

TABLE 23.202-14. R-4 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.	
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	35 ft. and 3 stories [2]	
Residential Additions	16 ft. [3]	
Notes:		
1. One additional resident is allowed for remaining lot area between 200 and 350 square feet.		

Supportive Housing	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	ZC * -	23.302.0 70.1- Supportiv e Housing
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Section 4. That Berkeley Municipal Code Table 23.204-12 is amended to read as follows:

TABLE 23.204-12. C-U SETBACK STANDARDS

LOT LINE & PROJECT CONDITIONS	REQUIRED SETBACK
Front	
Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No <u>minimum</u> .
Rear	
Lots on south side of University Avenue abutting a lot in residential district-	<u>Minimum of 10 ft. or 10% of lot depth, whichever is greater, and an Average of 20 ft. [2] [3]</u>
All other lots <u>Lots on south side of University Avenue not abutting a residential district</u>	<u>No minimum 10 ft. or 10% of lot depth, whichever is greater</u>
Lots on north side of University Avenue	See 23.204.060(-D)(-5)- C-U University Commercial District (Solar Access)
Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by 23.304.030.C.2- Setbacks (Lots Adjacent to Residential Districts) [34]

Section 5. That the following lines under the category “Public and Quasi-Public Uses” in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) named Low Barrier Navigation Center; and Supportive Housing are hereby added to read as follows:

TABLE 23.206-1. ALLOWED USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with
	M	MM	MU-LI	MU-R	

Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply					an asterisk following the permit requirement (e.g., ZC*)
Public and Quasi-Public Uses					
Low Barrier Navigation Center	NP	NP	NP	ZC	
Supportive Housing	NP	NP	NP	ZC*	23.302.070.1 – Supportive Housing

Notes:

1. A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- ~~2. Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.~~
- ~~3.2.~~ See 23.304.030(C)(-2)(-b) ([Modifications in Commercial Districts](#)) for allowed reductions.
- ~~4.3.~~ If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.

Section 6. That the Notes in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) are amended to read as follow:

Notes:

- [1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.
- [2] Not permitted 20,000 sq. ft. or more.
- [3] Requires a Use Permit if 5,000 sq. ft. or more
- [4] Requires a Use Permit for uses more than 20,000 sq. ft.
- ~~[5] Not permitted over 2,000 sq. ft.~~
- ~~[5]6~~ Not permitted over 3,000 sq. ft.
- ~~[6]7~~ Requires a Use Permit for uses more than 40,000 sq. ft.
- ~~[7]8~~ Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.

[89] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.

[940] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.

[104] Allowed with Zoning Certificate if under 1,000 sq. ft. Requires Use Permit if over 20,000 sq. ft.

[112] Requires an AUP for uses more than 20,000 sq. ft.

[123] Not permitted 1,500 sq. ft. or more.

[134] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.

[145] Requires Use Permit for markets over 5,000 sq. ft.

Section 7. That Berkeley Municipal Code Section 23.206.040(C)(1) is amended to read as follows:

1. As used in this section, “child-serving use” means a school, child care center, ~~family day care~~ or park/recreational facility used by children. Family day care homes are exempt from these regulations and not included in the definition of “child-serving use.”

Section 8. That Berkeley Municipal Code 23.206.050(A)(3)(a) is amended to read as follows:

- a) To approve a Use Permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.

Section 9. That Berkeley Municipal Code 23.206.050(B) is hereby removed and Berkeley Municipal Code 23.206.050(C) is amended to read as follows:

~~**B. Protected Industrial Uses in the MU-R District.**~~

- ~~1. **Protected Industrial Uses Defined.** Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally established uses.~~

- ~~2. **Permit Required.** Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.~~
- ~~3. **Permit Findings.** To approve a Use Permit, when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:~~
- ~~a) The change of use 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; and~~
 - ~~b) Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.~~
- ~~4. **Exempt from Permit Requirement.** A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.~~

B. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.

1. **Protected Non-Industrial Uses Defined.** A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
- (a) Was legally established as of July 6, 1989; and
 - (b) Exists as a single stand-alone use or is combined with residential use in a live/work unit.

TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES

CATEGORY	PROTECTED USES
Category 1	Art/craft studio
Category 2	1) Art galleries, ancillary to art/craft studios and when located in the same building 2) Child care facility 3) Family day care home 3) Fine arts performance, instruction and rehearsal studios (dance, music, theater) 4) Theaters, stage performance, but excluding motion picture theaters

2. **Permit Required for Change of Use.**
- (a) Table 23.2069 shows permits required to change a protected non-industrial use.

TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE

EXISTING PROTECTED USE GROSS FLOOR AREA	NEW USE		
	A PROTECTED USE IN THE SAME CATEGORY	A PROTECTED USE IN A DIFFERENT CATEGORY	A NON-PROTECTED USE THAT OCCUPIES ALL OF THE NON-RESIDENTIAL FLOOR AREA IN THE BUILDING
Less than 5,000 sq. ft.	ZC	AUP	AUP
5,000 sq. ft. or more	AUP	UP(PH)	UP(PH)

3. *Owner-Occupied Exemption.* A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.
4. *Findings.*
 - (a) To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.
 - (b) When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

Section 10. That Berkeley Municipal Code 23.206.080(B)(6) is amended to read as follows:

6. *General Retail.* Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supplies stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.

Section 11. That Berkeley Municipal Code 23.206.090(B)(3) is amended to read as follows:

3. *Community Care Facility.* Community care facilities are allowed in the MU-R district ~~only~~ as a change of use. New construction is ~~not~~ permitted with a Use Permit.

Section 12. That Berkeley Municipal Code 23.302.070(I) through (K) are hereby added and re-lettered to read as follows:

I. Supportive Housing.

1. Permits Required. Supportive housing shall be allowed by right in zones where multifamily and mixed uses are permitted, if the proposed housing development satisfies requirements pursuant to Government Code Section 65651(a).

J. Smoke Shops. In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J.K. Warehouse Storage for Retail Use.

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
 - a) An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
 - b) Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

Section 13. That Berkeley Municipal Table 23.304-2 is amended to read as follows:

TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS

BUILDING FEATURE	MAXIMUM PROJECTION INTO REQUIRED SETBACK (MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE LOT LINE)			
	FRONT	REAR	INTERIOR SIDE	STREET SIDE
Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Eaves, Cornices, Canopies, Awnings and Bay Windows [1]	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]	6 ft.	6 ft.	1.5 ft.	2.5 ft.
Balconies and fire escapes [1]	6 ft.	6 ft.	1.5 ft.	2.5 ft.

Notes:

1. Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.
2. Uncovered decks, porches, landings and stairs less than 30 inches in height (not including railings) are not subject to minimum setback requirements.

Section 14. That Berkeley Municipal Code 23.304.030(B)(4) is amended to read as follows:

4. *Accessibility for Persons with Disabilities.* Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities that are less than 30 inches above grade (not including railings) are not subject to minimum setback requirements. Any accessibility feature with a height above grade of 30 inches or more (not including railings) may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
 - a) One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot, and-
 - b) The projection may 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 accessibility feature.

Section 15. That Berkeley Municipal Code Section 23.308.020(C) is hereby removed as follows:

~~C. **Required Permits.** Table 23.308-1 shows permits required for emergency shelters.~~

~~TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS~~

DISTRICTS	PERMIT REQUIRED [1]
Residential Districts	
R-1, R-1A, ES-R, R-2, R-2A, R-3	Not Permitted
R-4, R-5, R-S, R-SMU, and R-BMU	
15 beds or fewer [1]	ZC
More than 15 beds	UP(PH)
Commercial Districts	
C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC	

25 beds or fewer	ZC
More than 25 beds	UP(PH)
C-DMU	
60 beds or fewer	ZC
More than 60 beds	UP(PH)
Manufacturing Districts	
M, MM, MU-LI, MU-R	Not Permitted
Notes: [1] See also permit requirements based on floor area of use in Table 23.308-2.	

Section 16. That Berkeley Municipal Code 23.308.030(A) is amended to read as follows:

- A. *All Districts.* The following standards apply to emergency shelters in all districts.
1. No individual or household ~~may~~shall be denied emergency shelter because of an inability to pay.
 2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
 3. When abutting a Residential District, all waiting and intake areas ~~areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation,~~ shall be located indoors.
 - ~~4. The following e~~Emergency shelter facilities are required :to have
 - ~~5.4.~~ Aan area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
 - ~~a. Shower and restroom facilities~~
 - ~~6.5.~~ The following incidental uses are permitted in emergency shelter facilities ~~are optional:~~
 - ~~a. Secure personal storage.~~
 - ~~b. Daytime services.~~
 - ~~c.a.~~ Meal servicesOn-site cafeteria.
 - ~~d. Communal kitchen.~~
 - ~~e. Laundry equipment for clients.~~
 - ~~f.b.~~ Child care center.
 - ~~g. Vehicle and/or bicycle parking.~~
 - ~~7.6.~~ Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.

- ~~8.7.~~ On-site management and security shall be provided at all times the facility is in operation and on-site management shall be provided at least one hour before and after facility operation hours.
- ~~9.~~ ~~The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:~~
- ~~a.~~ Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
 - ~~b.~~ Eligibility criteria, enforcement rules, and procedures for disruptive clients.
 - ~~c.~~ Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
 - ~~d.~~ Bed bug prevention.
 - ~~e.~~ Refuse collection.
 - ~~f.~~ Security procedures.
 - ~~g.~~ Separation of sleeping areas and restrooms by gender and for families.
 - ~~h.~~ Consistency with the Alameda County Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
- ~~10.8.~~ The shelter provider shall conduct a community meeting after giving notice to all owners and occupants ~~on record with the Alameda County Assessor~~ within a 100-foot radius of the proposed shelter location. 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.

Section 17. That Berkeley Municipal Code 23.308.030(C) is amended to read as follows:

C. *Findings.* To approve a Use Permit for an emergency shelter, under Section 23.308.020.C (Required Permits) or 23.308.030.B.2 (Standards in Residential Districts), the Zoning Adjustments Board (ZAB) must find that a:

A larger shelter facility will help meet the City's goals pertaining to emergency housing of the homeless.;

~~1. The circumstances of the subject property make the larger facility appropriate; and~~
~~2. Design features will minimize impacts on the surrounding area.~~

Section 18. That the section named; Non-Residential Uses; in Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-1. REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
Non-Residential Uses	
All non-residential uses except uses listed below	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : See 23.322.030.A.2
Community Care Facility	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : One per two non-resident employees <u>None required</u>
Food Service Establishment	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 300 sq. ft.
Hospital	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per each 4 beds plus 1 per each 3 employees
Library	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 300 sq. ft.
Non-Medical Offices	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

Section 19. That the category named Non-Residential Uses in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Non-Residential Uses	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees None required
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	<u>MU-LI District:</u> 1.5 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	<u>MU-R District:</u> 1.0 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	<u>MU-LI District:</u> 1 per 1,000 sq. ft. of work area where workers/clients are permitted <u>MU-R District:</u> if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Section 20. That Berkeley Municipal Code 23.322.020(D) is hereby added to read as follows:

[D. Location Exemption.](#) Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 21. That Berkeley Municipal Code 23.324 title is hereby amended to read as follows:

Chapter 23.324

CONFORMING AND NONCONFORMING USES, STRUCTURES, ~~AND~~ BUILDINGS, AND LOTS

Section 22. That Berkeley Municipal Code 23.324.010 is hereby amended to read as follows:

23.324.010 Chapter Purpose.

This chapter establishes regulations for conforming and nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

Section 23. That Berkeley Municipal Code 23.324.050 section title is hereby amended to read as follows:

23.324.050 Conforming and Nonconforming Structures and Buildings

Section 24. That Berkeley Municipal Code 23.324.050(F)(4)(a) is hereby amended to read as follows:

(a) A conforming or nonconforming residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.

Section 25. That Berkeley Municipal Code 23.502.020(C)(17) is amended to read as follows:

17. *Community Care Facility.* A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes

community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), ~~supportive housing (California Government Code Section 65582),~~ and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, [supportive housing](#), and transitional housing.

Section 26. That Berkeley Municipal Code 23.502.020(E)(3) is amended to read as follows:

3. *Emergency Shelter.* Temporary lodging for homeless persons with minimal supportive services [that may include 24-hour services and that](#) may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e).

Section 27. That Berkeley Municipal Code 23.502.020(F)(3) is amended to read as follows:

3. *Family Day Care Home.* An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care home ~~is considered an activity allowed as part of residential use in any zoning district in which residential uses are either permitted or conditionally permitted. must be incidental to must be operated in the dwelling unit or accessory building where the family day care operator resides.~~

~~(a) Small Family Day Care Home. A family day care home for eight or fewer children, including children who live at the home.~~

~~(b) Large Family Day Care Home. A family day care home for nine to fourteen children, including children who live at the home.~~

Section 28. That Berkeley Municipal Code 23.502.020(H)(10) is amended to read as follows:

10. *Household.* One or more persons, whether or not related by blood, marriage or adoption, [with common access to and use of all living, kitchen and eating areas within a single dwelling unit.](#) ~~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.~~

Section 29. That Berkeley Municipal Code 23.502.020(L)(21) is hereby added as follows:

21. *Low Barrier Navigation Center.* A temporary, low-barrier-to-entry shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, healthy services, shelter, and housing. Low barrier includes best practices to reduce barriers to entry, such as allowing partners, pets, storage of personal items, and privacy pursuant to California Government Code Section 65660 and includes services to connect people to permanent housing through a service plan and services staffing and a coordinated entry system pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations.

Section 30. That Berkeley Municipal Code Section 23.502.020(S)(16) is amended to read as follows:

16. *Single-Family Dwelling.* A building designed for and occupied exclusively by one household, and may provide accommodations for six or fewer employees as “employee housing” pursuant to Healthy and Safety Code Section 17021.5

Section 31. That Berkeley Municipal Code Section 23.502.020(S)(32) is amended to read as follows:

32. *Supportive Housing.* As defined in Health and Safety Code 50675.14(b)(2), housing with no limit on length of stay,(2): Housing with no limit on length of stay, Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in Health and Safety Code 50675.14(b)(3)in subdivision (d) of Section 53260 of the CA Health and Safety Code, with no limit on length of stay, that is and 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.

Section 32. 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.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

RECOMMENDATION

The Planning Commission is asked to conduct a public hearing to: 1) discuss zoning amendments required to align with State laws related to special needs housing, employment housing, family day care home, and parking, as well as additional non-substantive edits to the sections of the Berkeley Municipal Code (BMC) listed below; and 2) make a recommendation to City Council to approve the proposed Zoning Ordinance amendments (Attachment 1).

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking

- 23.502.020 Glossary

SUMMARY

In response to recent changes in housing-related State laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with State law requirements for special needs and employment housing, family day care home, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

BACKGROUND

On January 18, 2023, The Berkeley City Council adopted an updated Housing Element for the period 2023-2031 (Resolution No. 70,669-N.S). On February 28, 2023, the State Department of Housing and Community Development (HCD) found the adopted Housing Element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code) and stated the City must continue timely and effective implementation of all programs. Program 31 – Zoning Code Amendments: Special Needs Housing - requires the City of Berkeley to review and adopt new zoning provisions by December 2023 to align land use standards with State law requirements for special needs housing. In addition, staff is also bringing forward related parking, family day care home, and employee housing amendments required for compliance with other recently approved State laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance (**Attachment 1**).

DISCUSSION

The following is a summary of State law requirements related to special needs and employment housing, family day care home, parking, and also non-substantive technical edits identified by the Zoning Officer. Each section provides a brief summary and references a summary table that identifies the Zoning Ordinance section and the proposed changes (**Attachment 2**).

Emergency Shelter (AB 139 & AB 2339)

AB 139 (2019) limits the development standards that local jurisdictions can impose on emergency shelters. Jurisdictions are limited to regulating the following objective standards:

- Maximum number of beds,
- Sufficient parking to accommodate all staff, provided that this standard does not require more parking for shelters than other residential or commercial uses in the same zone,
- Size and location of onsite client waiting and intake areas,
- Proximity to other shelters, provided that shelters are not required to be more than 300 feet apart,
- Length of stay,

- Lighting,
- Provision of onsite management,
- Security during operating hours.

AB 2339 (2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services which may include, health care, transportation, retail, employment, and social services.

To address AB 139, staff propose removing standards that local jurisdictions cannot regulate and included Emergency Shelter in applicable Allowed Use Tables. No substantive changes for permit types or thresholds for number of beds are included. Staff also updated the definition of Emergency Shelter to clarify that 24-hour services may be included. Staff has not made any changes in response to AB 2339 because sites identified for emergency shelters are permitted and located in all areas where residential uses are permitted.

Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

“A Housing First, low barrier, service enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Low barrier shelters may also provide additional flexibility, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

The Berkeley Zoning Ordinance does not currently define or address low barrier navigation centers. Consistent with AB 101, staff propose adding the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff propose a definition of “low barrier navigation center” that is consistent with State law.

Supportive Housing (AB 2162)

AB 2162 (2018) requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria pursuant to [Government Code Section 65651\(a\)](#)¹. Additionally, parking is not required for supportive housing

¹ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65651.

projects located within one half-mile of a public transit stop as required by [Government Code Section 65654](#).

Currently, the Zoning Ordinance includes supportive housing within the definition of Community Care Facility, as well as a separate stand-alone definition for supportive housing. Proposed amendments would remove supportive housing from the community care facility definition, amend Residential, Commercial and Manufacturing zoning use tables to be consistent with State law criteria, and amend the definition to be consistent with the California Health and Safety Code.

Projects consistent with the criteria under Government Code Section 65651(a) would be permitted by-right, with a Zoning Certificate, in all zones where multifamily and mixed-use residential development is permitted. If a project does not qualify under the criteria, the project would not be considered supportive housing and would fall under another definition for housing with permit requirements consistent with the respective allowed use table.

Employee Housing Act

The Employee Housing Act (Health and Safety Code 17021.5) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation. Thus, the proposed changes amend the definition of Single-Family Dwelling to include employee housing.

Household definition

The 2023-2031 Housing Element – Program 31, identified the City’s definition of household as a necessary update. The City’s definition of Household must be updated to remove constraints on housing for persons with disabilities by updating the definition to align with current City practices. The City does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household.

Lanterman Developmental Disabilities Service Act (Lanterman Act)

In accordance with State law, State licensed residential facilities for six or fewer persons are a permitted use in all zones where residential use is permitted, with no minimum parking requirement for non-resident employees. The following State statutes require that small (serving six or fewer persons) licensed group homes be treated like other residential uses and include: facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1), pediatric day health facilities (Health & Safety Code 1267.9;1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

Currently, the Zoning Ordinance permits conversion of an existing dwelling into a residential care facility, regardless of the number of residents, with a Zoning Certificate. New construction of a residential care facility would require a Use Permit, which is the same review procedure applied to other residential development. Proposed amendments would make that consistent within the MU-R District. Parking for non-resident employees is the other non-compliant development standard and the proposed amendment would remove parking requirements for nonresident employees to be consistent with State law.

Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by State law, a residential use and prohibits the requirement of a business license.

Currently, the Zoning Ordinance requires a Zoning Certificate for all family day care homes and the City does not require a business license. Proposed amendments edit the definition of family day care home to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amended the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes.

Minimum Parking Requirements (AB 2097)

AB 2097 (2022) prohibits the City from imposing a minimum off-street automobile parking requirement on most development projects in any zoning district located within one half-mile of a transit stop as defined in Section 21155 of Public Resource Code², which defines a high-quality transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

The proposed amendments include a location exemption from the minimum off-street parking requirements and codify language consistent with State law to preserve the City’s ability to impose minimum parking requirements in limited instances, such as parking requirements for hotels and event centers.

Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with State law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

²https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. The following technical edits are proposed:

- **R-4 Lot and Height Standards.** The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet and text was omitted from the old Zoning Ordinance. Staff propose to correct the error.
- **C-U Setback Standards.** Text was omitted from the old Zoning Ordinance for rear setbacks for lots on south side of University Avenue abutting lot in residential district and staff proposes to include the text to correct the error. Staff also proposes to correct an error with rear setbacks for all other lots. A minimum setback is now required when the old Zoning Ordinance did not require a rear setback. Note two is also proposed to be removed because the old Zoning Ordinance gave it as an example, not as an additional requirement.
- **MU-LI Building Materials and Garden Supplies.** The old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 square feet with an AUP and 20,000 square feet or larger with a Use Permit. The new Zoning Ordinance limits building materials and garden supplies stores to 2,000 square feet. Proposed text corrects this error and permits uses and sizes consistent with the old Zoning Ordinance.
- **Allowed Building Projections.** If all criteria are met³, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent across sections and clarify development requirements for accessibility features.
- **Protected Industrial Uses.** The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts – which must provide replacement space. Findings were only applied when a use permit was required. Staff has clarified the applicability to only apply when the change of use requires a use permit. Similarly, for the MU-R Zoning District, the old Zoning Ordinance did not require a use permit to change a protected industrial use for all changes from manufacturing, warehousing and wholesale. The new Zoning Ordinance requires a permit for all change of uses regardless of the permit requirements. The proposed changes correct this error.

ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that:

- The proposed Zoning Ordinance amendments related to *special needs housing and employment housing* are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts.

³ <https://berkeley.municipal.codes/BMC/23.406.090>

- The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act, together with State CEQA guidelines collectively, “CEQA”) because they have no potential for resulting in a physical change to the environment.

In the event that this Ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

NEXT STEPS

Upon receiving Planning Commission recommendation and public comment, Staff will forward a proposed draft Zoning Ordinance to City Council for consideration and adoption.

ATTACHMENTS

1. Draft Ordinance – Zoning Ordinance Amendments
2. Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits - Reference Matrix
3. Public Hearing Notice

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

Table 1 Proposed Amendments to Address State Laws

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p>AB 139 (Emergency Shelters 2019) limits the development standards that local jurisdictions can impose on emergency shelters.</p> <p>AB 2339 (Emergency Shelters 2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable</p>	<p>23.202.020 Allowed Land Use (Residential) 23.204.040 Allowed Land Uses (Commercial) 23.308.020(C) Applicability and Nonconformities (Emergency Shelters); 23.308.030(A) Standards for Emergency Shelters; 23.308.030(C) Findings (Emergency Shelters); 23.502.020(E)(3) Defined Terms;</p>	<p>Staff removes standards that local jurisdictions cannot regulate pursuant to AB139 and included Emergency Shelter in applicable allowed use tables. No substantive changes for permit types or thresholds for number of beds are included.</p> <p>Staff also updates the definition of Emergency Shelter to clarify that 24-hour services are permitted</p> <p>No changes are proposed in response to AB 2339 because sites identified for emergency shelters are already permitted and located in all areas where residential uses are permitted.</p>
<p>AB 101 (Low Barrier Navigation Center) defines “low barrier navigation centers” and requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.</p>	<p>23.202.020 Allowed Land Uses (Residential) 23.204.020 Allowed Land Uses (Commercial) 23.206.020 Allowed Land Uses (Manufacturing) 23.502.020(L)(21) Defined Terms</p>	<p>AB 101 permits low barrier navigation centers by right in zones that permit multifamily uses. Consistent with AB 101, staff added the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff added a definition consistent with state law.</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p>AB 2162 (Supportive Housing) requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria.</p>	<p>23.202.020 Allowed Land Uses (Residential) 23.204.020 Allowed Land Uses (Commercial) 23.206.020 Allowed Land Uses (Manufacturing) 23.302.070(I) Use-Specific Regulation 23.502.020(C)(17) Defined Terms 23.502.020(S)(32) Defined Terms</p>	<p>Staffed amend Community Care Facility definition to exclude supportive housing; supportive housing is already defined separately. Staff amended the definition to be consistent with the California Health and Safety Code and amended the City-wide Use Specific Regulations to include criteria requirements under AB 2162.</p>
<p>Health and Safety Code HSC 17021.5 (Employee Housing Act) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation.</p>	<p>23.502.020(S)(16) Defined Terms</p>	<p>Staff update Single-Family Dwelling definition to include “employee housing” to align with the requirements from Health and Safety Code 17021.5</p>
<p>House Element (Household definition) as part of Program-31 requires the City to update the definition of household to remove constraint on housing for persons with disabilities.</p>	<p>23.502.020(H) Defined Terms</p>	<p>Staff update the definition of household to be consistent with current practice. The city does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household.</p>
<p>Lanterman Developmental Disabilities Service Act (Residential Care) requires local jurisdictions to allow licensed residential facilities for six or</p>	<p>23.206.090(B)(3) MU-R Mixed Use-Residential District (Community Care Facility)</p>	<p>Staff amend use specific standards to allow new development of community care facilities with a Use Permit, consistent with multifamily use, in the MU-R District.</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
fewer persons as a permitted use in all zones where residential use is permitted.		
<p>SB 234 (Supportive Child Care Family Home Expansion) considers all family daycare homes for up to 14 children, that operate under the standards of state law, a by-right residential use and prohibits the requirement of a business license.</p>	<p>23.202.020 Allowed Land Uses (Residential) 23.206.040(C)(1) Use-Specific Regulation 23.206.050(C) Protected Non-Industrial Uses in the MU-LI and MU-R Districts. 23.502.020(F)(3) Defined Terms</p>	<p>Staff amend the definition of “family day care home” to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amend the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes and removed “family day care home” as a protected industrial use in MU-R District, as it is inherently a permitted residential use.</p>
<p>AB 2097 (Minimum Parking Requirements) prohibits the City from imposing a minimum off-street automobile parking requirement on most¹ development projects in any zoning district located within ½ mile of a major transit stop as defined in Section 21155 of Public Resource Code² which defines a major transit stop as a</p>	<p>23.322.020(D) Applicability</p>	<p>Consistent with state law, staff included a location exemption for all development projects within ½ mile of major transit stop.</p>

¹ “Project” does not include a project where any portion is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except where a portion of a housing development project is designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

² https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.		

Table 2 Proposed Technical Zoning Amendments

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
R-4 Lot and Height Standards	23.202.110 E. (Development Standards) Table 23-202-14 R-4 Lot and Height Standards	Staff identified an error between the allowed building height and permit requirement in the R-4 Lot and Height Standards Table. The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet. Also, text describing stories permitted from the old Zoning Ordinance was omitted from the footnote. Staff propose to correct the error and include omitted text.
C-U Setback Standards	23.204.060 D. (Development Standards) Table 23.204-12: C-U Setback Standards	Text was omitted from the old Zoning Ordinance pertaining to minimum rear setbacks and staff propose to include the text to correct the error.

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other
 Technical Edits – Reference Matrix

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
MU-LI Building Materials and Garden Supplies	23.206.080(B)(6) (Land use Regulations) Notes for Table 23.206-1	Old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 sq. ft. with an AUP. New Zoning Ordinance limits building materials and garden supplies stores to 2,000 sq. ft. Proposed text corrects error and permit uses consistent with the old Zoning Ordinance.
Allowed Building Projections	23.304.030 (Setbacks)	<p>A Reasonable Accommodation (AUP) is required for all wheelchair ramps, if all criteria are met, while stairs, decks and porches are not subject to minimum setback requirements.</p> <p>Proposed amendments would make standards consistent for other similar features like porches, stairs and decks and clarifies development requirements for accessibility features.</p>
Protected Industrial Uses	23.206.050(A)(3)(a) Protected Industrial Uses in the MM and MU-LI Districts 23.206.050(B) Protected Industrial Uses in the MU-R District.	The old Zoning Ordinance allowed conversion of protected industrial uses up to 25% or 20,000 (whichever was less) with an AUP. The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts. Findings were only applied when a use permit was required. The new Zoning Ordinance removed this standard and requires findings for all permits and does not

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		<p>permit conversions with an AUP. Staff has clarified the applicability to only apply when a change of use requires a use permit. In addition, Staff propose amendments to protected industrial uses in the MU-R district. The MU-R district in the old Zoning Ordinance did not describe protected industrial uses and incorrectly included findings for change of use between manufacturing, warehousing and wholesale to match formatting for MM and MU-LI Districts. Staff propose to remove the protected industrial uses from the MU-R Zoning District.</p>
<p>Conforming and Nonconforming Uses, Structures, and Buildings.</p>	<p>23.342 Nonconforming Uses, Structures and Buildings 23.342.040 Nonconforming Structures and Buildings 23.324.050(F)(4)(a) Damage and Reconstruction</p>	<p>The old Zoning Ordinance clarified that both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles, which resulted in additional permitting requirements for conforming projects that could have been rebuilt with a Zoning Certificate. The proposed changes correct this error through revised headers and titles</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other
Technical Edits – Reference Matrix



PLANNING COMMISSION

Notice of Public Hearing

Wednesday, June 7, 2023

Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law Relating to Special Needs Housing, Employment Housing, Family Day Care, Parking; and Non-Substantive Technical Edits

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, June 7, 2023 at 5:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, June 2, 2023.

PROJECT DESCRIPTION

The proposed amendments to the City's Zoning Ordinance (Title 23) respond to recent changes in state law related to housing, family day care, and parking, and the requirements of the City's 2023-2031 Housing Element to align the City's land use standards to state law requirements for special needs and employment housing, by December 2023. The proposed amendments also include non-substantive technical corrections to ensure consistency throughout the Zoning Ordinance. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- 23.324 Nonconforming Uses, Structures, and Buildings
- 23.502.020 Glossary

ENVIRONMENTAL REVIEW STATUS

Staff recommends that the Planning Commission make a recommendation to the City Council that the proposed zoning ordinance amendments related to housing are within the scope of the analysis of the

City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act (CEQA) because they have no potential for resulting in a physical change to the environment. If the ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

PUBLIC COMMENT & FURTHER INFORMATION

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

Zoe Covello
Planning Commission Clerk
Email: PlanningPC@cityofberkeley.info

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

Correspondence received by **12 pm on Tuesday, May 30, 2023**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, June 5, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm one day before this public hearing**, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

COMMUNICATION ACCESS

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

FURTHER INFORMATION

Questions should be directed to Justin Horner at (510)-981-7476 or JHorner@berkeleyca.gov
Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.