



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, July 17, 2024  
6:00 PM

North Berkeley Senior Center  
1901 Hearst Avenue, Berkeley

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

### PRELIMINARY MATTERS

- 1. Roll Call:** **Merker, Blaine**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff, Chair**, appointed by Councilmember Taplin, District 2  
**Moore III, John E. “Chip”**, appointed by Councilmember Bartlett, District 3  
**Oatfield, Christina**, appointed by Councilmember Harrison, District 4  
**Mikiten, Elisa**, appointed by Councilmember Hahn, District 5  
**Marthinsen, Emily**, appointed by Councilmember Wengraf, District 6  
**Twu, Alfred**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali, Vice Chair**, appointed by Mayor Arreguín
- 2. Land Acknowledgement:** The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

- 3. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 4. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
- 5. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: September 4, 2024**
- 6. **Chairperson’s Report:** Report by Planning Commission Chair.
- 7. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 8. **Approval of Minutes:** Approval of Draft Minutes from the regular meeting on June 5, 2024.
- 9. **Future Agenda Items and Other Planning-Related Events:** None.

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 10. **Action:** **Public Hearing: State Law Technical Edits 2024**  
**Recommendation:** Review the revised proposed zoning ordinance amendments to align the Berkeley Municipal Code (BMC) with state law related to electric vehicle charging, as well as additional non-substantive edits and corrections. Take public comment, discuss draft ordinance amendments, and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A
- 11. **Action:** **Public Hearing: Keep Innovation in Berkeley**  
**Recommendation:** Review the revised proposed zoning ordinance amendments related to R&D uses and other changes; take public comment; discuss the amendments; and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:** None.

**Communications:** General.

**Late Communications:** (Received after the packet deadline):

**Late Communications:** (Received and distributed at the meeting):

**ADJOURNMENT**

## **Meeting Procedures**

### ***Public Testimony Guidelines:***

Speakers are customarily allotted up to two minutes each and may not cede their time to another speaker. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

### ***Consent Calendar Guidelines:***

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

### ***Procedures for Correspondence to the Commissioners:***

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than 20 pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the day just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning of, the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

**Communications are Public Records:** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

**Written material** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3<sup>rd</sup> Floor**, during regular business hours.

**Note: If you object to a project or to any City action** or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

**Meeting Access:** This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three business days before the meeting date.

*Please refrain from wearing scented products to public meetings.*



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2                   **June 5, 2024**

3   The meeting was called to order at 6:02 p.m.

4   **Location:** North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, CA 94709

5   • **ROLL CALL:**

6       **Commissioners Present:** Blaine Merker, Jeff Vincent, Christina Oatfield, Elisa Mikiten,  
7       Emily Marthinsen, Alfred Twu, Savlan Hauser, and Barnali Ghosh

8  
9       **Commissioner Absent:** Chip Moore

10  
11       **Staff Present:** Secretary Justin Horner, Clerk Brian Garvey, Zoe Covello, Ashley James,  
12       Jamie Albrecht, and Alisa Shen.

13 • **LAND ACKNOWLEDGEMENT.**

14   The City of Berkeley recognizes that the community we live in was built on the territory of  
15   xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-  
16   chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the  
17   sovereign Verona Band of Alameda County. This land was and continues to be of great  
18   importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin  
19   our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the  
20   documented 5,000-year history of a vibrant community at the West Berkeley Shellmound,  
21   and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's  
22   residents have and continue to benefit from the use and occupation of this unceded stolen  
23   land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating  
24   the City of Berkeley, it is not only vital that we recognize the history of this land, but also  
25   recognize that the Ohlone people are present members of Berkeley and other East Bay  
26   communities today. The City of Berkeley will continue to build relationships with the Lisjan  
27   Tribe and to create meaningful actions that uphold the intention of this land  
28   acknowledgement.

29 • **ORDER OF AGENDA:** No changes.

30 • **PUBLIC COMMENT PERIOD:** 1

31 • **PLANNING STAFF REPORT:**

- 32 • City Council approved contract for consultant team for College Ave, Shattuck Ave,  
33 and Solano Ave corridors upzoning. Project should start in summer 2024. Goal is to  
34 be done by end of 2026.
- 35 • Demolition Ordinance is scheduled for June 25 City Council Meeting.
- 36 • Two items for next meeting on July 17<sup>th</sup>: Public Hearing on Keep Innovation in  
37 Berkeley and Public Hearing on Technical Edits to Zoning Ordinance package.
- 38 • Reminder: June 26<sup>th</sup> Special Meeting is cancelled.

39

40 **Information Items:**

- 41 • Community Health Assessment (CHA) and Community Health Improvement Plan (CHIP)

42 **Communications:**

- 43 • General

44 **Late Communications:**

- 45 • None.

46

47 • **CHAIR REPORT:**

- 48 • None.

- 49 • **COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the  
50 items below, additional matters may be reported at the meeting.

51

- 52 • None.

53 **8. APPROVAL OF MINUTES:**

54 Motion/Second/Carried (Merker/Hauser) to approve the Planning Commission Meeting  
55 Minutes from May 1, 2024.

56

57 Ayes: Merker, Vincent, Oatfield, Mikiten, Marthinsen, Twu, and Hauser.

58 Noes: None. Abstain: Ghosh. Absent: Moore (7-0-1-1)

59

60 **9. OTHER PLANNING RELATED EVENTS:**

- 61 • None.

62

63

64

65 **AGENDA ITEMS**

66 **10. Discussion: Draft Local Hazard Mitigation Plan**

67 Emergency Services Coordinator Jamie Albrecht presented on the draft Local Hazard Mitigation  
68 Plan (LHMP). The Commissioners took public comment, asked questions, and provided  
69 feedback on the proposed Plan.

70 **Public Comments: 1**

71

72 **11. Discussion: General Plan Update: Disaster Preparedness & Safety, Environmental**  
73 **Justice, and Climate Metrics**

74 Senior Planner Ashley James presented on the status of the general plan update. The  
75 Commissioners asked questions and provided feedback on the proposed updates.

76 **Public Comments: 0**

77 Motion/Second/Carried (Mikiten/Ghosh) to adjourn the meeting at 7:22 pm.

78

79 Ayes: Merker, Vincent, Oatfield, Mikiten, Marthinsen, Twu, Hauser, and Ghosh.

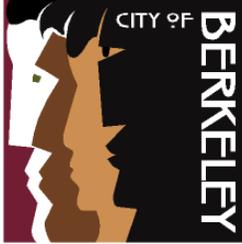
80 Noes: None. Abstain: None. Absent: Moore (8-0-0-1)

81

82 **Members in the public in attendance: 3**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hr 20 min**



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: July 17, 2024

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related Electric Vehicle Charging and Technical Edits

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### RECOMMENDATION

Conduct a public hearing, receive public comment, and upon conclusion make a recommendation to City Council on proposed amendments to Title 23 (**Attachment 1**) to align the Berkeley Municipal Code (BMC) with state law related to electric vehicle charging, as well as additional non-substantive edits and corrections. The proposed changes apply to the sections of the Berkeley Municipal Code listed below:

- 23.106.020 Lot Coverage
- 23.106.080 Building Separation
- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.090 C-NS North Shattuck Commercial District
- 23.204.100 C-SA South Area Commercial District
- 23.204.130 C-DMU Downtown Mixed-Use District
- 23.204.140 C-W West Berkeley Commercial District
- 23.204.150 C-AC Adeline Corridor 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 Uses (Manufacturing)

- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.306.010 Purpose (Accessory Dwelling Units)
- 23.306.030 Development Standards (Accessory Dwelling Units)
- 23.306.040 Permit Procedures (Accessory Dwelling Units)
- 23.310.020 General Requirements Excluding Incidental Beer and Wine
- 23.310.030 Alcohol Beverage Standards When Incidental to Food Service
- 23.322.030 Required Parking Spaces
- 23.322.080 Parking Layout and Design
- 23.334.030 Transportation Demand Management Program Requirements
- 23.502.020 Defined Terms (Glossary)

#### SUMMARY

In response to recent changes in state laws, staff has prepared Zoning Ordinance amendments to align land use standards with state law requirements for electrical vehicle charging. Furthermore, staff has incorporated technical, non-substantive amendments to maintain consistency and accuracy throughout the Zoning Ordinance.

#### CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance must comply with state laws, including those related to land use and zoning. The 2023 California Legislative Session saw the enactment of a number of significant new housing laws and extensions of existing laws.

While some state laws may require more extensive amendments or require changes to the City's internal permitting procedures to be consistent, the proposed zoning amendments constitute only minor technical amendments to maintain consistency.

#### BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 of the Berkeley Municipal Code and adopted a new Title 23 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.

The proposed zoning amendments are required for compliance with recently adopted state laws and include corrections and technical edits to ensure consistency throughout the Zoning Ordinance. (**Attachment 1**)

**DISCUSSION**

The following is a summary of state law requirements and also non-substantive technical edits. Each section provides a brief summary of the relevant law and the proposed zoning amendment. A summary table is below in Table 1.

**Electric Vehicle Charging Stations (AB 1236 & AB 970)**

AB 1236 (2015) and AB 970 (2021) require all cities to approve applications to install an electric vehicle charging station through the issuance of a building permit or similar nondiscretionary permit. All zoning review for electric vehicle charging stations are prohibited by state law. Therefore, the proposed zoning amendments remove the electrical vehicle charging station use from the allowable land use table and clarify as such in the glossary definition.

**Technical Edits**

The proposed zoning amendments include non-substantive changes to correct mistakes and errors and to codify existing practice. The following technical edits are proposed:

**Table 1 Policy Summary and Zoning Amendment Proposals**

	<b>Policy</b>	<b>Proposed Zoning Change</b>	<b>Ordinance Sections (Attachment 1)</b>
1.	<b>Lot Coverage, Measurement and Projections</b>	<ul style="list-style-type: none"> <li>Clarify that lot coverage includes pergolas, trellises, and similar horizontal features.</li> <li>Clarify that the lot coverage calculation excludes the first 24 inches of eaves.</li> <li>Correct transmittal error and clarify that the number of stories of a main building shall be used to determine lot coverage, where applicable.</li> <li>Clarify building separation is measured from main or ADU buildings within the same lot.</li> </ul>	1 2
2.	<b>Residential Allowed Land Uses Table</b>	<ul style="list-style-type: none"> <li>Correct the Allowable Use Table to include missing Residential, Hotel use.</li> <li>Correct an error that transposed the required permits for Alcohol Beverage Service in the R-SMU and R-BMU zoning districts.</li> </ul>	3
3.	<b>Commercial Allowed Land Uses Table</b>	<ul style="list-style-type: none"> <li>Correct an error in the Allowed Uses table that incorrectly shows blank spaces instead of dashes for some uses in the C-NS district.</li> </ul>	4

	Policy	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		<ul style="list-style-type: none"> <li>Remove permitting requirements for Electric Vehicle Charging to be consistent with state law.</li> </ul>	
4.	<b>C-NS Development Standards</b>	<ul style="list-style-type: none"> <li>Correct an error in the C-NS Development Standards Table to clarify that Maximum FAR should only apply to non-residential projects (not mixed-use residential projects).</li> </ul>	5
5.	<b>C-SA South Area Commercial District</b>	<ul style="list-style-type: none"> <li>Correct omission of a reference to 23.304.130 (Non-residential Districts Abutting a Residential District).</li> </ul>	6
6.	<b>C-DMU Setbacks</b>	<ul style="list-style-type: none"> <li>Correct an error in C-DMU Setbacks that unintentionally limited ZABs ability to modify setback standards.</li> </ul>	7
7	<b>C-W Land Use Regulations</b>	<ul style="list-style-type: none"> <li>Correct a transmittal error: the definition for automotive uses in C-W <i>does not</i> include vehicle parts store.</li> <li>Replace C-W Ground Floor Use called "Lodging," which is not defined in the BMC, with "Tourist Hotel and Tourist Motel" which are.</li> <li>Clarify that C-W Designated Node figures so they indicate entire parcels, not just frontages.</li> </ul>	8 9 10 11
8	<b>C-AC Development Standards</b>	<ul style="list-style-type: none"> <li>Update C-AC Subarea Development Standards to include 100% affordable housing density, consistent with state law.</li> </ul>	12
9.	<b>C-AC North and South Subareas Adeline Development Standards</b>	<ul style="list-style-type: none"> <li>Correct formatting error related to Maximum Lot Coverage in C-AC North and South Adeline Subarea Development Standards table.</li> <li>Update C-AC Subarea Development Standards to include 100% affordable housing density, consistent with state law</li> </ul>	13
10.	<b>Alcohol Beverage and Sales and Outdoor Seating</b>	<ul style="list-style-type: none"> <li>Correct permitting threshold in R-SMU and R-BMU which were incorrectly switched.</li> </ul>	3 14 15 27

	Policy	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		<ul style="list-style-type: none"> <li>• Correct section reference under MU-R in allowed use table.</li> <li>• Clarify that outdoor sales or food service is <i>permitted</i>, consistent with Berkeley Business amendments.</li> <li>• Provide more detailed definition of an increase in alcoholic beverage sale or service.</li> <li>• Correct section title to match glossary terms.</li> </ul>	28 29
11.	<b>Manufacturing Allowed Use Table</b>	<ul style="list-style-type: none"> <li>• Removal of unnecessary asterisks.</li> </ul>	14
12.	<b>Manufacturing District Protected Uses</b>	<ul style="list-style-type: none"> <li>• Correct transmittal error to clarify that permit findings are only applicable to projects that meet certain thresholds.</li> <li>• Correct transmittal error related to conversions to non-protected industrial use across multiple buildings. The requirement is that 25% <i>or more</i> of the floor area remain protected, not 25% or less.</li> <li>• Clarifying outdoor café seating is permitted in the MU-LI and MU-R districts with an AUP.</li> </ul>	16 17 18
13.	<b>California Government Code Update</b>	<ul style="list-style-type: none"> <li>• Update sections of the BMC which reference missing or moved California Government Code sections.</li> <li>• Clarify ADU conversion is applicable to existing buildings or accessory structures, per State law.</li> </ul>	19 20 24 26 30
14.	<b>Accessory Dwelling Units</b>	<ul style="list-style-type: none"> <li>• Clarify that certain building elements may project two feet into <i>any setback</i>, not just a front or side setback.</li> <li>• Update language consistent with state law requirements for review of ADU applications. Remove neighborhood notice as a requirement for a completed application. (Note: neighborhood notice will still occur.)</li> <li>• Clarify that certain types of housing are exempt from ADU owner-occupancy requirements, per State law.</li> <li>• Grammatical clarifications.</li> </ul>	21 22 23 24 25

	Policy	Proposed Zoning Change	Ordinance Sections (Attachment 1)
15.	<b>Parking Layout and Design and</b>	<ul style="list-style-type: none"> <li>Clarifying that off-street parking for an ADU is permitted in any configuration regardless of parking requirements.</li> </ul>	31
16.	<b>Transportation Demand Management Update</b>	<ul style="list-style-type: none"> <li>Clarifying group living accommodation must still provide transit benefits.</li> </ul>	32
17.	<b>Glossary</b>	<ul style="list-style-type: none"> <li>Clarify that there can be more than one main building on a lot.</li> <li>Clarify that Electric Vehicle Charging is considered an allowed use in all zoning districts.</li> </ul>	33 34

**ENVIRONMENTAL REVIEW**

The proposed ordinance includes revisions related to vehicle charging requirements as well as technical edits which correct or clarify language. The proposed zoning ordinance amendments do not include any allowances for additional development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Adoption of the proposed amendments would in no way have a significant effect on the environment, and therefore is not subject to CEQA (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

**NEXT STEPS**

Upon a recommendation from the Planning Commission, the City Council will conduct a public hearing on the proposed ordinance. The proposed zoning amendments would be effective 30 days after the second reading of the ordinance by the City Council.

**CONTACT PERSON**

Robert Rivera, Senior Planner, Planning and Development Department, 510-981-7480

**ATTACHMENTS**

1. Draft Ordinance – Zoning Ordinance Amendments
2. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RULES OF MEASUREMENT CHAPTER (BMC 23.106), RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS CHAPTER (BMC 23.302), ACCESSORY DWELLING UNITS CHAPTER (BMC 23.306), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), PARKING AND LOADING CHAPTER (BMC 23.322), TRANSPORTATION DEMAND MANAGEMENT CHAPTER (BMC 23.334), AND GLOSSARY (BMC 23.502) FOR CONSISTENCY WITH STATE LAW, AND TECHNICAL EDITS

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

Section 1. That BMC Section 23.106.020 is amended to read as follows:

- A. **Lot Coverage Defined.** Lot coverage means all the area of a lot, as projected on a horizontal plane, which is:
1. Enclosed by the exterior walls of buildings or enclosed accessory structures;  
or
  2. Covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area.
  3. Covered by a pergola, trellises or similar horizontal features.
- B. **Exclusions.** The lot coverage calculation excludes:
1. Uncovered porches, landings and stairs;
  2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
  3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
  4. The first 24 inches of eaves extending from a building or structure.
  5. ~~4.~~ The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.
- C. **Lot Coverage Standards.** Number of stories of main building(s) shall be used to determine the allowable lot coverage where applicable.

Section 2. That BMC Section 23.106.080(A) is amended to read as follows:

- A. **Measurement.** Building separation is measured as the distance between the surface of a main building or ADU's outer wall and the outer wall surface of the closest **main building or ADU on the same lot.**

**Section 3.** That the lines named “Alcoholic Beverage Service” is amended and the lines “Hotel, Residential” are hereby added, within Table 23.202-1 within BMC 23.202.020 to read as follows

Table 23.202-1: Allowed Land Uses in Residential Districts

ZC = Zoning Certificate <b>AUP = ADMINISTRATIVE USE PERMIT</b> 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	<b>RESIDENTIAL DISTRICTS</b>										<b>USE-SPECIFIC REGULATIONS</b>  APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	<b>R-1</b>	<b>ES-R</b>	<b>R-2</b>	<b>R-2A</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-S</b>	<b>R-SMU</b>	<b>R-BMU**</b>	
<b>Residential Uses</b>											
<u>Hotel, Residential</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>UP(PH)</u>	<u>UP(PH)</u>	<u>UP(PH)</u>	<u>UP(PH)</u>	<u>NP</u>	
<b>Commercial Uses</b>											
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	<u>ZC-UP(PH)*</u>	<u>UP(PH) ZC*</u>	23.310—Alcoholic Beverage Sales and Service

**Section 4.** That the lines named “Electric Vehicle Charging Station”, “Vehicle Parts Store”, “Construction Products”, “Light Manufacturing”, “Pesticides/Herbicides/Fertilizers”, “Petroleum Refining and Products”, “Pharmaceuticals”, and “Warehouse-based Non-Store Retailer”, are amended in Table 23.204-1 within BMC 23.204.020 to read as follows:

Table 23.204-1. Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
<b>Vehicle Service and Sales Uses</b>												
<del>Electric Vehicle Charging Station</del>	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP*	AUP	
Vehicle Parts Store	ZC	NP	ZC	ZC	ZC	ZC	ZC	ZC	NP	AUP[1]*	ZC	
<b>Industrial and Heavy Commercial Uses</b>												
Construction Products	-	-	-	-	=	-	-	-	-	UP(PH)	--	
Light Manufacturing	-	-	-	-	=	-	-	-	-	AUP [1]	--	
Pesticides/Herbicides/ Fertilizers	-	-	-	-	=	-	-	-	-	UP(PH)	--	
Petroleum Refining and Products	-	-	-	-	=	-	-	-	-	UP(PH)	--	
Pharmaceuticals	-	-	-	-	=	-	-	-	-	UP(PH)	--	
Warehouse-Based Non- Store Retailer	-	-	-	-	=	-	-	-	-	-	--	

Section 5. That Table 23.204-24 within BMC Chapter 23.204.090 is amended to read as follows:

**TABLE 23.204--1: C-NS DEVELOPMENT STANDARDS**

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum			23.304.020
New Lots	4,000 sq. ft.	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space, Minimum			23.304.090–Usable Open Space
Per Dwelling Unit	40 sq. ft. [2]	200 sq. ft.	
Per Group Living Accommodation Resident	No minimum	90 sq. ft.	
Floor Area Ratio, Maximum	1.0 [3]	No maximum	
Main Building Height [43]			
Minimum	2 stories	No minimum	
Maximum	35 ft. and 3 stories	28 ft. and 2 stories	
Lot Line Setbacks, Minimum			23.304.030
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-25	
Abutting/Confronting a Residential District	See 23.304.030.C.2		
Building Separation, Minimum	No minimum [54]	See Table 23.204-25	23.304.040
Lot Coverage, Maximum	100%	See Table 23.204-26	23.304.120

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Notes:			
[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.			
[2] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.			
[3] <u>For mixed-use residential projects, no maximum floor area ratio.</u>			
[4] <del>[3]</del> Basement levels devoted exclusively to parking are not counted as a story.			
[5] <del>[4]</del> For mixed-use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25			

Section 6. That BMC 23.204.100(D)(2) is hereby amended to read as follows:

**2. Lots Abutting or Confronting a Residential District. See 23.304.130 (Non-Residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.**

**3. 2. Modification for Mixed Use and Residential Projects.** The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.20430 – excluding FAR - for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:

- a. The project encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building;
- b. The modification allows consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;
- c. The modification facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines; or
- d. The modification provides consistency with the purposes of the district as listed in Section 23.204.100.A (District Purpose).

Section 7. That BMC 23.204.130(E)(3)(b) is amended to read as follows:

**(b) Modifications to Standards.** The ZAB may modify ~~the~~ all C-DMU district setback standards ~~in Table 23.204-38~~ with a Use Permit upon finding that the

modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

Section 8. That BMC Section 23.204.140(B)(3)(a) is amended to read as follows:

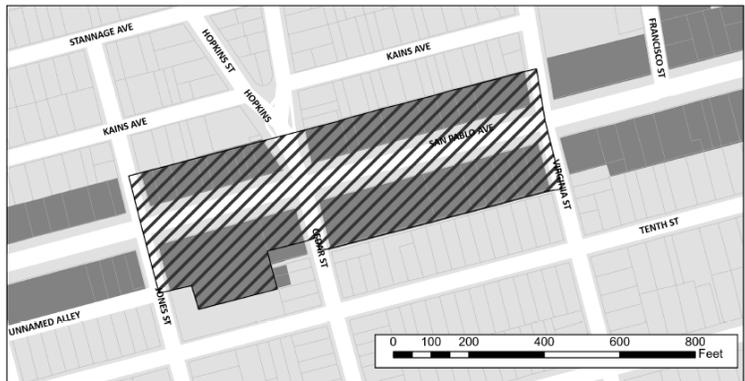
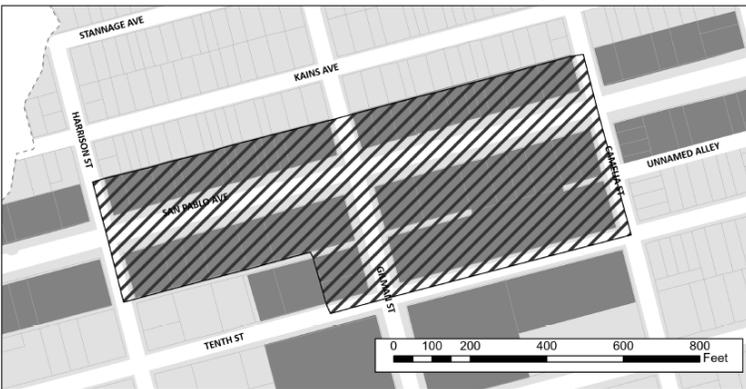
- (a) As used in this paragraph, “automotive use” means a use classified in Table 23.204-1 as a vehicle service and sales use, except for vehicle parts store. “Automotive site” means a site which was legally used or approved for use as an automotive use as of March 1, 1997.

Section 9. That BMC Section 23.204.140(D)(3) is amended to read as follows:

3. **Ground Floor Uses.** The ground floor of buildings in designated nodes may be used only for the following:
- (b) Retail sales
  - (c) Personal and household services
  - (d) Retail financial services (banks)
  - (e) Food and alcohol service
  - (f) ~~Lodging~~ Tourist Hotel and Tourist Motel
  - (g) Entertainment and assembly uses
  - (h) Gasoline/vehicle fuel stations
  - (i) Vehicle repair uses
  - (j) New car sales
  - (k) Used vehicles sales
  - (l) Required access to and lobbies serving upper-story uses

Section 10. That Figure 23.204-7 C-W Designated Nodes within BMC Chapter 23.204.140 is amended to read as follows:

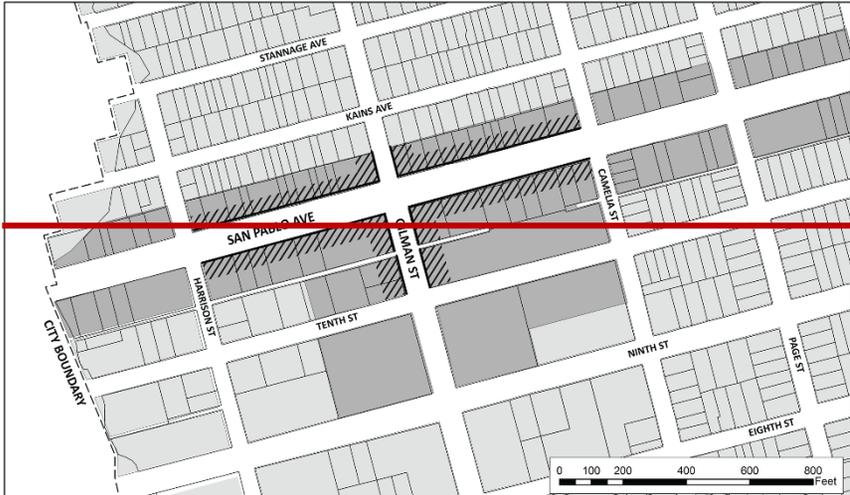
**FIGURE 23.204-7: C-W DESIGNATED NODES**



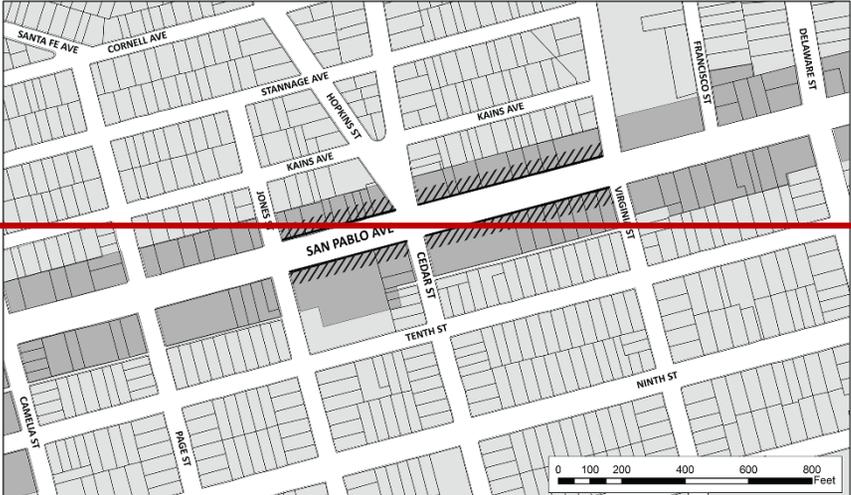
← N [Grey Box] West Berkeley Commercial (C-W) [Hatched Box] Node 1: Gillman and San Pablo

← N [Grey Box] West Berkeley Commercial (C-W) [Hatched Box] Node 2: Cedar and San Pablo





← N West Berkeley Commercial (C-W) Node 1: Gillman and San Pablo Parcel boundaries as of [adoption date]



← N West Berkeley Commercial (C-W) Node 2: Cedar and San Pablo Parcel boundaries as of [adoption date]

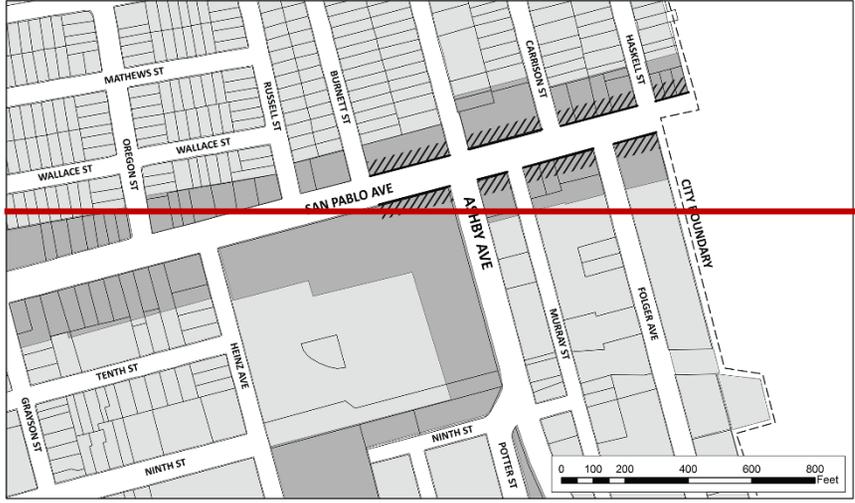


← N West Berkeley Commercial (C-W) Node 3: University and San Pablo Parcel boundaries as of [adoption date]

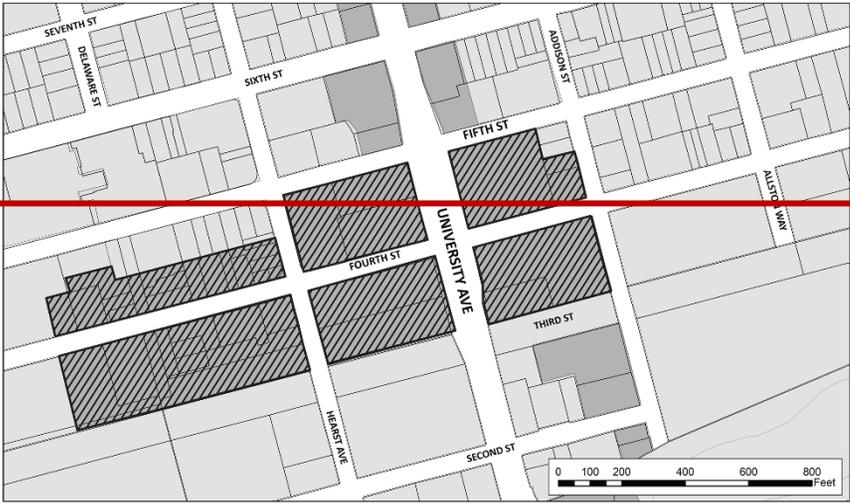


← N West Berkeley Commercial (C-W) Node 4: Dwight and San Pablo Parcel boundaries as of [adoption date]

Section 11. That Figure 23.204-8 within BMC Chapter 23.204.140 is removed:



← N West Berkeley Commercial (C-W) Node 5: Ashby and San Pablo Parcel boundaries as of [adoption date]



← N West Berkeley Commercial (C-W) Node 6: 4th Street and University Parcel boundaries as of [adoption date]

Section 12. That the line “Notes,” in Table 23.204-43, C-AC South Shattuck Subarea Development Standards, within BMC Chapter 23.204.150, C-AC Adeline Corridor Commercial District, is amended to read as follows:

**TABLE 23.204-43: C-AC SOUTH SHATTUCK SUBAREA DEVELOPMENT STANDARDS**

Notes:
[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.
[2] For the purposes of calculating the State Density Bonus the Tier 1 density shall constitute the maximum allowable gross residential density. Tier 2, 3, and 4 density and <u>100 percent affordable housing density</u> is authorized as a local density bonus under Government Code section 65915(n).
[3] An AUP may be granted to reduce usable open space requirements if shown to be necessary to build an all-electric building.
[4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.
[5] Affordable units calculated as percentage of total units

Section 13. That Table 23.204-44, C-AC North and South Adeline Subarea Development Standards, within BMC Chapter 23.204.150, C-AC Adeline Corridor Commercial District, is amended to read as follows:

**TABLE 23.204-44: C-AC NORTH AND SOUTH ADELINE SUBAREA DEVELOPMENT STANDARDS**

	Project Land Use [6]							Supplemental Standards
	Residential and Mixed Use Tier 1 (Less than 14% affordable housing)	Residential & Mixed Use Tier 2 (14% affordable housing)	Residential & Mixed Use Tier 3 (21% affordable housing)	Residential & Mixed Use Tier 4 (25% affordable housing)	Residential & Mixed Use (100% affordable housing)	Group Living Accommodation	Non-Residential	
Lot Area Minimum								23.304.020-Lot Requirements

New Lots	No minimum							
Per Group Living Accommodation Resident	N/A				350 sq. ft. [1]		N/A	
Usable Open Space, Minimum [3]	40 sq. ft.							
Per Dwelling Unit/GLA Resident [4]	N/A				40 sq. ft.			23.304.090-Usable Open Space
Floor Area Ratio, Maximum	2.0	3.5	4.0	5.0	5.0	2.5	2.8	
Residential Density, Maximum (du/acre) [2]	100	150	210	250	250	1 GLA resident per 350 sf of lot area	N/A	
Main Building Height, Maximum	3 stories 35 feet	5 stories 55 feet	6 stories 65 feet	7 stories 75 feet	7 stories 80 feet	4 stories 45 feet	3 stories 45 feet	
Lot Line Setbacks, Minimum								
Abutting/Confronting a Non-residential District	No minimum							23.304.030-Setbacks

Abutting/Confronting a Residential District	10 ft 20 ft from any shared lot line for any portion exceeding 35 feet 45 ft from front property line for any portion exceeding 45 feet						N/A	23.304.030-Setbacks  23.204.150.E.5
Building Separation, Minimum	No minimum							23.304.040-Building Separation in Residential Districts
<u>Lot Coverage, Maximum</u>								
Interior Lot	60%	90%	90%	90%	90%	60%	100%	
Corner Lot	70%	90%	90%	95%	95%	70%	100%	
<del>Lot Coverage, Maximum</del>	<del>100%</del>							
<p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density <u>and 100 percent affordable density is</u> authorized as a local density bonus under Government Code section 65915(n).</p> <p>[3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.</p> <p>[4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.</p> <p>[5] Affordable units calculated as percentage of total units</p>								

Section 14. That the lines named “Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting,” “Construction Products,” and “Light Manufacturing,” in Table 23.206-1, within BMC 23.206.020 are amended to read as follows:

Table 23.206-1. Allowed Uses in Manufacturing Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	Use-Specific Regulation
Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting	NP	NP	NP	See <a href="#">23.306</a> <a href="#">23.310</a>	
Construction Products	ZC*[9]	ZC*[9]	UP(PH)	NP	
Light Manufacturing	ZC*[7]	ZC*[7]	ZC*[1]	AUP*[3]	23.206.090(B)(5)

Section 15. That Berkeley Municipal Code 23.206.040(l)(3) be removed:

~~3. Outdoor sales or food service is not permitted.~~

Section 16. That Berkeley Municipal Code 23.206.050(A)(3) is amended to read as follows:

3. Permit Findings.

- (a) To approve a Use Permit in the MM and MU-LI districts required by Table 23.206-6 for to changes more than 20,000 square feet or 25 percent or more of the floor area of to a protected industrial use in the MM and MU-LI districts to a non-protected use, the ~~review authority~~ Zoning Adjustments Board (ZAB) must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.
- (b) To approve a Use Permit in the MU-LI district for a to change 25 percent or more of floor area to from a protected industrial use to a non-protected use in the MU-LI district, the ~~ZAB~~ Zoning Adjustments Board (ZAB) must also find that either:

- (1) The City has approved necessary Use Permits to provide comparable quality replacement space in Berkeley at a comparable rent that will be available before the demolition or change of use of the space; or
- (2) Both of the following:
  1. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.
  2. Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.

Section 17. That Berkeley Municipal Code 23.206.050(A)(7)(d)(ii) is amended to read as follows:

- ii. 25 percent or ~~less~~ more of the total gross floor area in all buildings on the lot(s) remains as a protected industrial use.

Section 18. That Berkeley Municipal Code 23.302.070(E)(1) is amended to read as follows:

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

Section 19. That Berkeley Municipal Code 23.306.010(A) is amended to read as follows:

- A. Implement California Government Code Title 7, Division 1, Chapter 13. Accessory Dwelling Units Sections 65852.1, 65852.2 and 65852.22.

Section 20. That Berkeley Municipal Code 23.306.030(A)(1) is amended to read as follow:

1. *Existing Building or Accessory Structure Conversion.* An ADU created entirely through conversion with no modifications to the existing building or accessory structure envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2, ADU Development Standards, is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.

Section 21. That Berkeley Municipal Code 23.306.030(A)(2) is amended to read as follow:

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

Section 22. That Berkeley Municipal Code 23.306.030(A)(8) is amended to read as follows:

8. *Attached ADU, New Construction Height.* Attached ADUs with maximum building height up to 25 ~~ft.~~ feet allowed with a Zoning Certificate.

Section 23. That Berkeley Municipal Code 23.306.030(C)(1) is amended to read as follows:

1. *Outside of the Hillside Overlay.* Chimneys, water heater enclosures, flues, heating and cooling equipment, eaves, cornices, canopies, awnings, bay windows, and balconies may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.

Section 24. That Berkeley Municipal Code 23.306.040(A) is amended to read as follows:

A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards and; deed restrictions. ~~and neighborhood noticing.~~

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).

2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 66314.65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

Section 25. That Berkeley Municipal Code 23.306.040(C)(4) is amended to read as follows:

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 owner is another governmental agency, land trust, or housing organization.

Section 26. That Berkeley Municipal Code 23.306.040(D) is amended to read as follows:

D. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a “qualified nonprofit corporation” may be sold or conveyed separately from the main building to a “qualified buyer,” as such terms are defined in ~~subdivision (b) of~~ Section 66341.65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;

2. Delineation of each cotenant’s responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;

3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

Section 27. That the title of BMC Section 23.310.020 is amended to read as follows:

23.310.020 General Requirements Excluding When Incidental to Food Beer and Wine Service

Section 28. That BMC 23.310.020(B) is amended to read as follows:

**B. Permit Required.**

1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).
2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority. An increase in alcoholic beverage sales or service includes, but is not limited to:
  - (a) Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine; or
  - (b) Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

Section 29. That Berkeley Municipal Code 23.310.030(B) is amended to read as follows:

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

1. Licensing.

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

2. Service.

- (a) ~~Beer and wine~~ Alcoholic beverage service shall be incidental to the primary food service use.
- (b) ~~Beer and wine~~ Alcoholic beverage service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcoholic Beverage Control.
- (c) The sale of ~~beer and wine~~ alcoholic beverages for off-site consumption is not permitted.
- (d) Hours of operation are subject to review and amendment by the review authority as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

3. Operation.

- (a) The food service establishment must operate at least five days a week.
- (b) The service of ~~beer and wine~~ alcoholic beverage shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- (c) During the food service establishment's hours of operation, all customer accessible areas shall be available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- (d) The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:

- i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and
  - ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.
- (e) The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- (f) The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

4. Advertising.

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

5. Training.

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

Section 30. That the lines named “Accessory Dwelling Unit” Table 23.322-1, within BMC 23.322.030 is amended to read as follows:

Land Use	Number of Required Off-street Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	<u>Junior ADU:</u> None required <u>ADU outside of Hillside Overlay:</u> None required <u>ADU within Hillside Overlay:</u> 1 per ADU unless the parcel satisfies the criteria in subdivision ( <del>a</del> ) of Government Code Section <del>66322 65852.2</del> , using the definition of public transit as

Land Use	Number of Required Off-street Parking Spaces
	established in subdivision <del>(j)(11)</del> of Government Code <u>66313</u> <u>65852.2</u>

Section 31. That Berkeley Municipal Code 23.322.080(G) is amended to read as follows:

**G. Placement—ADU.**

1. On a lot with an existing or proposed ADU, replacement of ~~required~~ off-street parking for ~~the a~~ main building, or ~~required~~ off-street parking for an ADU, is allowed in any configuration on the lot, including within the front setback; or
2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front ~~yard~~ setback.

Section 32. That Berkeley Municipal Code 23.334.030(B) is hereby amended to read as follows:

**B. Transit Benefit.**

1. At least one of the following transit benefits shall be offered, at no cost, to project residents for a period of ten years after the issuance of a Certificate of Occupancy.
  - (a) A monthly pass for unlimited local bus transit service; or
  - (b) A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
2. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in each dwelling unit.
3. For projects that include Group Living Accommodations, the project shall provide one transit pass per Group Living Accommodation bedroom.
- ~~4. 3~~A notice describing these transportation benefits shall be posted in a location or locations visible to residents.

Section 33. That Berkeley Municipal Code 23.502.020(B)(11)(b) is hereby amended to read as follows:

- b) *Main Building*. A building which is designed for, or in which is conducted, the primary use of the lot on which it is situated. In any residential district any dwelling, except an accessory dwelling unit, is ~~the~~ a main building on the lot.

Section 34. That Berkeley Municipal Code 23.502.020(E)(2) is hereby amended to read as follows:

2. **Electrical Vehicle Charging Station.** A facility that supplies electric energy for the recharging of plug-in electric vehicles. An electric vehicle charging station is considered an allowed use in all zoning districts.

Section 35. 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 COMMISSION

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## Notice of Public Hearing

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### Wednesday, July 17, 2024

### **Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to State Law including 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, July 17, 2024 at 6:00 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). In accordance with the Brown Act, Planning Commission meetings will be held in person only.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5:00 p.m. on Friday, July 12, 2024.

#### **PROJECT DESCRIPTION**

The proposed amendments to the City's Zoning Ordinance (Title 23) align the Berkeley Municipal Code (BMC) consist of technical edits and corrections and do not include any substantive policy changes. The proposed changes apply to the sections of the Berkeley Municipal Code listed below:

- 23.106.020 Lot Coverage
- 23.106.080 Building Separation
- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.090 C-NS North Shattuck Commercial District
- 23.204.100 C-SA South Area Commercial District
- 23.204.130 C-DMU Downtown Mixed-Use District
- 23.204.140 C-W West Berkeley Commercial District
- 23.204.150 C-AC Adeline Corridor 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 Uses (Manufacturing)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.306.010 Purpose (Accessory Dwelling Units)
- 23.306.030 Development Standards (Accessory Dwelling Units)
- 23.306.040 Permit Procedures (Accessory Dwelling Units)
- 23.310.020 General Requirements Excluding Incidental Beer and Wine
- 23.310.030 Alcohol Beverage Standards When Incidental to Food Service
- 23.322.030 Required Parking Spaces

State Late Technical Edits 2024

Page 2 of 2

NOTICE OF PUBLIC HEARING  
July 17, 2024

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- 23.322.080 Parking Layout and Design
- 23.334.030 Transportation Demand Management Program Requirements
- 23.502.020 Defined Terms (Glossary)

**LOCATION:** Citywide

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Planning%20and%20Building>

### **ENVIRONMENTAL REVIEW STATUS**

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The proposed amendments related to electrical vehicle charging, as well as the proposed technical edits to the zoning code, are exempt from CEQA pursuant to CEQA Guidelines 14 Cal. Code. Regs 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**

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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@berkeleyca.gov](mailto:PlanningPC@berkeleyca.gov)

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

Correspondence received by **12pm on Tuesday, July 9, 2024**, 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, July 15, 2024** 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 on Tuesday, July 16, 2024** 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 on Tuesday, July 16, 2024** 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**

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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)

1947 Center Street, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.7474  
E-mail: [planning@berkeleyca.gov](mailto:planning@berkeleyca.gov)

State Late Technical Edits 2024

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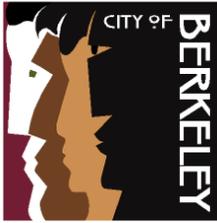
NOTICE OF PUBLIC HEARING  
July 17, 2024

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business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

**FURTHER INFORMATION**

Questions should be directed to Robert Rivera, at (510) 981-7480 or [rivera@berkeleyca.gov](mailto:rivera@berkeleyca.gov). Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.



Planning and Development Department  
Land Use Planning Division

PUBLIC HEARING  
July 17, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Planning and Development Department

SUBJECT: Public Hearing: Zoning Amendments to Keep Innovation in Berkeley

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#### RECOMMENDATION

Staff recommends the Planning Commission hold a public hearing, take public comment, discuss the proposed zoning ordinance amendments (**Attachment 1**), and provide a recommendation to the City Council.

City Staff have prepared zoning ordinance amendments (**Attachment 1**) that include the following:

1. Revise permit requirements for Research and Development (R&D) in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), C-NS (North Shattuck Commercial) and C-DMU (Downtown Mixed-Use) zoning districts to allow R&D uses under 20,000 square feet with a Zoning Certificate (ZC) and R&D uses 20,000 square feet or larger with an Administrative Use Permit (AUP);
2. Revise the “District Purpose” sections of the MM (Mixed Manufacturing) and MU-LI (Mixed Use-Light Industrial) zoning districts to specifically encourage R&D;
3. Remove the regulation of Biosafety Level (BSL) Class organisms from the zoning ordinance;
4. Revise minimum parking requirements for R&D uses to 1 per 1,000 square feet for locations outside of a half mile radius of a high-quality transit corridor; and
5. Revise the definition of the Laboratory use to clarify the difference between a testing laboratory and a laboratory associated with research or experimentation.

### CURRENT SITUATION AND ITS EFFECTS

Firms engaged in R&D operate differently than they did in past decades, and current permit thresholds and land use requirements have not kept pace with the state of the art in the R&D sector. Berkeley business owners and operators, industry groups, educational institutions, and innovation sector leaders shared their experiences where land use regulations in Berkeley for R&D were more restrictive or cumbersome than in neighboring jurisdictions, and how, in some cases, the lack of clarity was a deterrent to locating or growing their business in Berkeley. This is especially true for startups, early-stage R&D businesses, or small enterprises without the expertise or financial runway to navigate the existing permitting process but are yet keen to locate in Berkeley to be close to the talent, innovation, educational, and research opportunities afforded by UC Berkeley, Lawrence Berkeley National Lab and other anchor institutions.

### BACKGROUND

In response to the September 13, 2022 *Keep Innovation in Berkeley (Attachment 2)*, and previous work on the March 10, 2020 referral to *Update the Definition of Research and Development*, the Office of Economic Development (OED) gathered input from a number of business operators and leaders in the biotechnology, clean technology and other R&D industries that are innovating locally.

On September 13, 2022, City Council referred Planning Commission a set of four items and accompanying zoning changes to provide relief from regulations that are “inhibit[ing] innovation in Berkeley.” On May 1, 2024 Planning Commission held a discussion on the *Keep Innovation in Berkeley Referral Response (Attachment 3)*, and provided policy direction to staff.

Proposed zoning ordinance amendments consistent with that direction are included in **Attachment 1** and are summarized in Table 1, below.

Table 1 Proposed Zoning Ordinance Amendments

	<b>Proposed Amendments</b>	<b>BMC Section(s)</b>	<b>Change from May 1?</b>
<b>1</b>	<p><b>Revise permit requirements for R&amp;D</b> in the C-T, C-C, C-W, C-U, C-NS, and C-DMU zoning districts:</p> <ul style="list-style-type: none"> <li>Under 20,000 square feet: Zoning Certificate (ZC)</li> <li>20,000 square feet or larger: Administrative Use Permit (AUP)</li> </ul>	Table 23.204-1. Allowed Uses in Commercial Districts	<b>Yes</b>
<b>2</b>	<p><b>Add R&amp;D to District Purpose Statements</b> in MM and MU-LI districts.</p>	23.206.070.A MM Mixed Manufacturing District. 23.206.080.A MU-LI Mixed Use-Light Industrial District.	No
<b>3</b>	<p><b>Remove regulation of BSL Class organisms</b> from the Zoning Ordinance.</p>	23.206.080.B.5 MU-LI Mixed Use-Light Industrial District.  23.502.020.L.1 Defined Terms	<b>Yes</b>
<b>4</b>	<p><b>Revise Parking Requirements for R&amp;D uses</b> to 1 space per 1,000 square feet.</p>	Table 23.322-4 Table 23.322-2 Required Parking Spaces	No
<b>5</b>	<p><b>Revise definition of Laboratory</b> to clarify difference between testing laboratories and research-laboratories.</p>	23.502.020.L.1 Defined Terms	<b>Yes</b>

## DISCUSSION

On May 1, 2024, the Planning Commission held a discussion on the *Keep Innovation in Berkeley* referral and provided feedback and policy direction to staff. The staff report for that meeting (**Attachment 3**) includes background information on the referral and policy development process, as well as rationales for each of staff's proposed zoning ordinance amendments. Additional discussion and rationale are included below for items that were revised as a result of Planning Commission discussion on May 1, 2024.

### *Proposed Zoning Ordinance Amendments*

#### **Revise Permit Requirements for R&D Uses**

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission a recommendation to revise permit requirements for R&D uses in the C-T, C-W, C-U, and C-DMU zoning districts to a ZC for R&D uses under 20,000 square feet and an AUP for uses 20,000 square feet or larger.

At their May 1, 2024 meeting, the Planning Commission recommended expanding this revision to include the C-NS district. As the rationale for revising the permit requirements in the C-T, C-DMU and C-U zoning districts was based on the proximity of these zoning districts to UC Berkeley, the Planning Commission felt that including the C-NS zoning district, which is similarly close to campus, was consistent with the policy direction recommended in the referral.

#### **Add R&D to District Purpose Statements**

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission a recommendation to revise the purpose statements for the MM and MU-LI zoning districts to explicitly note that R&D uses were encouraged in those zoning districts.

At their May 1, 2024 meeting, the Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

### **Removal of Regulation of Biosafety Level (BSL) Class Organisms**

Consistent with the *Keep Innovation in Berkeley* referral, staff had reviewed the BMC's language related to Biosafety Level (BSL) to ensure that it was consistent with neighboring jurisdictions and was not an unnecessary obstacle to the establishment of R&D uses in Berkeley. The referral also called for staff to consider amending or repealing BMC sections that include regulation of BSL.

At the May 1, 2024 meeting, Planning Commissioners expressed support for removing the one provision in the BMC that regulates BSL for uses in the MU-LI zoning district. The Planning Commission reasoned that the regulation of biological resources, hazardous materials, toxics and other potential hazards are regulated through a variety of existing local, State and Federal regulations and agencies, and that, given the extent of existing regulation, the inclusion of BSL-related rules in the BMC was redundant and served as more of an obstacle to the establishment of R&D uses than a necessary rule to protect public health and safety.

Accordingly, the proposed zoning amendments include the removal of the provision regulating BSL in the MU-LI zoning district. Additionally, as the removed provision was the only instance of BSL in the BMC, there is no longer any use to note BSL levels in the BMC's Glossary. Therefore, language explaining BSL levels was removed from the Glossary.

### **Revise Parking Requirements for R&D Uses**

Consistent with the *Keep Innovation in Berkeley* referral, staff presented to the Planning Commission recommendations to revise minimum off-street parking requirements for R&D uses to align with other similar uses.

At their May 1, 2024 meeting, the Planning Commission expressed support for these changes, which are included in the proposed zoning amendments.

### **Revise Definition of Laboratory**

The *Keep Innovation in Berkeley* referral included a request that any additional recommendations identified by staff or the Planning Commission that would encourage R&D in Berkeley be presented to the City Council.

Consistent with that request, staff recommends that the Planning Commission consider the following revision to the definition of Commercial Physical or Biological Laboratory in BMC Section 23.502.020(L)(1):

- (a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological testing ~~research, experiments,~~ and measurements s may be performed.

Staff had noted that the current definition of Commercial Physical or Biological Laboratory overlaps with the definition of R&D in the Glossary.<sup>1</sup> Both definitions include the words “biological,” “scientific,” and “research” in relation to laboratories. Such overlap has led to confusion as to how a proposed use would be classified, a difficulty that is exacerbated by the fact that there are different permit requirements for Laboratory and R&D uses in the same zoning districts. There is a concern that an otherwise permitted R&D use may mischaracterize itself as a Laboratory and exclude from consideration certain locations in Berkeley due to stricter permit requirements for Laboratories.

The proposed revision attempts to clarify the type of use that constitutes a Commercial Physical or Biological Laboratory. Such a use would be characterized by the testing or measurement of materials that are collected or received on-site, but are not part of new research or product or process development. The most common use that would meet this new definition would be a laboratory that processes blood samples for a hospital or other health service use. Laboratories that are engaged in scientific or product research would more easily be classified under R&D with this clarification.

#### NEXT STEPS

Hold a Public Hearing, and advance zoning ordinance amendments (**Attachment 1**) for recommendation to the City Council.

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<sup>1</sup> BMC Section 23.502.020.R.8: 8. *Research and Development*. An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

Zoning Amendments to Support Innovation in Berkeley  
Page 7 of 7

Item #11  
July 17, 2024

CONTACT PERSON

Justin Horner, Planning and Development Department, 510-981-7476

Attachments:

- 1: Proposed Zoning Ordinance Amendments
- 2: Keep Innovation in Berkeley Referral – September 13, 2022
- 3: Planning Commission Staff Report – May 1, 2024
- 4: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE COMMERCIAL DISTRICT CHAPTER (BMC 23.204),  
 MANUFACTURING DISTRICT CHAPTER (BMC 23.206), PARKING AND LOADING  
 REGULATIONS CHAPTER (BMC 23.322), TO SUPPORT BERKELEY'S  
 INNOVIATION BUSINESSES

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

Section 1. That the line named "Research and Development" in Table 23.204-1 in BMC Section 23.204.020 is amended, and a new line "Research and Development, 20,000 sq. ft. of larger" is added, to read:

**Table 23.204-1 Allowed Uses in the Commercial Districts**

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	Commercial Districts											USE- SPECIFIC REGULATI ONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Research and Development Under 20,000 sq. ft.	<u>ZC</u>	<u>ZC</u>	-	-	<u>ZC</u>	-	<u>ZC</u>	-	<u>ZC</u>	<u>ZC</u>	--	
Research and Development, 20,000 sq. ft. or larger	<u>AUP</u>	<u>AUP</u>	--	--	<u>AUP</u>	--	<u>AUP</u>	--	<u>AUP</u>	<u>AUP</u>	--	

Section 2. That BMC Section 23.206.070(A)(3) and 23.206.070(A)(5) are amended to read:

3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
  
5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;

Section 3. That BMC Section 23.206.080(A)(7) is amended to read:

7. Provide the opportunity for laboratory development and research and development facilities in appropriate locations;

Section 4. That a line named “Research and Development” is added to Table 23.322-2 in BMC Section 23.322.030(B) to read:

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>All Other Commercial Districts: 1 per 1,000 sq. ft.</u>
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Section 5. That a line named “Research and Development” is added to Table 23.322-4 in BMC Section 23.322.030(C) to read:

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

<u>Research and Development</u>	<u>Research and Development 1 per 1,000 sq. ft.</u>
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Section 6. That BMC Section 23.206.080(B)(5) to B(13) are amended to read:

~~5. Commercial Physical or Biological Laboratories. Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.~~

~~6. 5. 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.

~~7. 6. Pharmaceuticals Manufacturing.~~ Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.

~~8. 7. Public Market, Open Air.~~ Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.

~~9. 8. Recycling Facilities.~~ Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.

~~40.~~ 9. Theaters. Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.

~~44.~~ 10. Vehicle Wrecking. Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.

~~42.~~ 11. Vocational Schools. A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.

~~43.~~ 12. Wholesale Trade Proximity to Residential Use. For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.

Section 7. That BMC Section 23.502.020(L)(1) is amended to read:

1. Laboratories.

(a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological testing research, experiments, and measurements s may be performed.

(b) Cannabis Testing. A facility for the testing of the properties of cannabis intended for consumer use.

~~(c) Class 1 Organism. A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.~~

~~(d) Class 2 Organism. A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.~~

~~(e) Class 3 Organism. A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.~~

Section 8. 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.



CONSENT CALENDAR  
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), Mayor Jesse Arreguin (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments, codified performance standards, and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.
  - a. Performance standards should regulate and mitigate potential impacts on quality of life, public health, and environmental health, such as noise, odors, fumes, vibrations, dust, light pollution, hours of operation, and disposal and storage protocols for flammable, combustible, chemical, and hazardous substances.
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

POLICY COMMITTEE RECOMMENDATION

Referral: Keep Innovation in Berkeley

CONSENT CALENDAR September 13, 2022

On July 19, 2022, the Land Use, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Robinson/Bartlett) to approve the item with a positive recommendation. Vote: All Ayes.

### BACKGROUND

The City of Berkeley has over 400 “innovation sector” businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based companies receiving a total of nearly \$9 million in federal and state grants for R&D.<sup>1</sup> 35% of Berkeley’s innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city’s coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.<sup>2</sup> There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City’s zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.<sup>3</sup> This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguin and Councilmember Wengraf.

The original definition read:

*Research and Development.* An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities:

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<sup>1</sup> <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf>

<sup>2</sup> <https://berkeleystartupcluster.com/>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

Referral: Keep Innovation in Berkeley

CONSENT CALENDAR September 13, 2022

industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

*Research and Development:* An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

***Recommendation #1: Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C), West Berkeley (C-W), University (C-U), and Downtown Berkeley (C-DMU) with a Zoning Certificate, subject to performance standards.***

BMC 23.204.020.A Table 23.204-1<sup>4</sup> and 23.206.020.A Table 23.206-1<sup>5</sup> lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the City's two primary hubs of innovation.

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<sup>4</sup> <https://berkeley.municipal.codes/BMC/23.204.020>

<sup>5</sup> <https://berkeley.municipal.codes/BMC/23.206.020>

Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

However, noise disruption and biohazard safety are of particular concern when permitting new uses in commercial districts due to their mixed-use residential buildings and proximity to residential districts. It is important that staff and the Planning Commission consider strategies for mitigating any impacts of R&D in C-prefixed districts, including the use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, are an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

One example that the City of Berkeley can look towards is the City of Fremont. Fremont utilizes performance standards in their industrial districts, which house R&D activities, to ensure that "adjoining properties, persons and the community as well as the region are provided protection against adverse conditions which may be created by the various uses operating within the industrial zoning districts." The performance standards regulate noise, vibration, glare or heat, fire hazards, liquid or solid wastes, fissionable or radioactive material, and aesthetics.<sup>6</sup> See Attachment 1.

The City of San Diego serves as a case study of how R&D can co-exist with commercial and residential uses. In 2019, the San Diego City Council approved the creation of two new mixed-use zones, RMX (Residential Mixed-Use) and EMX (Employment Mixed-Use).<sup>7</sup> The stated purpose of the zones was to "provide housing and jobs near commercial centers and corridors to reduce dependency on the automobile, promote access to transit and multi-modal transportation systems, and to provide for a walkable, pedestrian-oriented setting, including infill of existing development." In both RMX and EMX zones, R&D is permitted by-right alongside multi-family residential development, retail, and most commercial services. San Diego also permits R&D in several of its commercial zones.<sup>8</sup>

***Recommendation #2: Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.***

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<sup>6</sup> <https://www.codepublishing.com/CA/Fremont/#!/html/Fremont18/Fremont1850.html> (18.50.040 Performance Standards)

<sup>7</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division07.pdf>

<sup>8</sup> <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division05.pdf>

The “District Purpose” sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City’s goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

**23.206.070 MM Mixed Manufacturing District.**

- A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
1. Implement the West Berkeley Plan MM designation;
  2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
  3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
  4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
  5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
  6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
  7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
  8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

**23.206.080 MU-LI Mixed Use-Light Industrial District.**

- A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:
1. Implement the West Berkeley Plan Light Manufacturing District designation;
  2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

***Recommendation #3: Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.***

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

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CONSENT CALENDAR September 13, 2022

In addition to considering the following changes to BMC 23.322.030 Table 23.322-2 and Table 23.322-4, staff and the Commission may take up the R&D parking discussion in concert with other Council referrals that address off-street parking, such as Councilmember Taplin’s “Parking Minima for Mixed-Use Projects and Manufacturing Districts” item referred on June 28, 2022.

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites

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	C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
<u>Research and Development</u>	<u>C-DMU District: 1.5 per 1,000 sq. ft.</u> <u>C-W District: 1 per 1,000 sq. ft [1]</u> <u>All Other Commercial Districts: 2 per 1,000 sq. ft.</u>
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	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

**Notes:**

[1] Spaces must be on the same lot as building it serves.

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

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	See Chapter <u>23.306</u>
Dwellings	None required
Group Living Accommodation	None required
<b>Non-Residential Uses</b>	

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All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
<u>Research and Development</u>	<u>1 per 650 sq. ft.</u>
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

**Notes:**

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

**Recommendation #4:** *Reviewing Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of*

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*R&D. Consider repealing the section or amending it to permit BSL-2 in all districts where research and development facilities or laboratories are permitted.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.<sup>9</sup>

**Chart of Biosafety Levels<sup>10</sup>**

Biosafety Level	BSL-1	BSL-2	BSL-3	BSL-4
Description	<ul style="list-style-type: none"> <li>· No Containment</li> <li>· Defined organisms</li> <li>· Unlikely to cause disease</li> </ul>	<ul style="list-style-type: none"> <li>· Containment</li> <li>· Moderate Risk</li> <li>· Disease of varying severity</li> </ul>	<ul style="list-style-type: none"> <li>· High Containment</li> <li>· Aerosol Transmission</li> <li>· Serious/Potentially lethal disease</li> </ul>	<ul style="list-style-type: none"> <li>· Max Containment</li> <li>· "Exotic," High-Risk Agents</li> <li>· Life-threatening disease</li> </ul>
Sample Organisms	E.Coli	Influenza, HIV, Lyme Disease	Tuberculosis	Ebola Virus
Pathogen Type	Agents that present minimal potential hazard to personnel & the environment.	Agents associated with human disease & pose moderate hazards to personnel & the environment.	Indigenous or exotic agents, agents that present a potential for aerosol transmission, & agents causing serious or potentially lethal disease.	Dangerous & exotic agents that pose a high risk of aerosol-transmitted laboratory infections & life-threatening disease.
Autoclave Requirements	None	None	Pass-thru autoclave with Bioseal required in laboratory room.	Pass-thru autoclave with Bioseal required in laboratory room.

Another way of classifying biological agents and organisms is using Risk Groups 1-4. While these two classification methods often align (e.g. BSL-2 equals Risk Group 2), they do not always. Biosafety Levels prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents. The Risk Group classification is only one factor to consider when determining the appropriate Biosafety Level for a particular agent. Other factors to

<sup>9</sup> <https://www.cdc.gov/training/quicklearns/biosafety/>

<sup>10</sup> <https://consteril.com/biosafety-levels-difference/>

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consider include the mode of transmission, pathogenicity, manipulations that will be conducted, volume, experience of staff, and more.<sup>11</sup>

4 RISK CLASSIFICATIONS OF INFECTIOUS MATERIAL			
Risk Group	Individual	Community	Examples
<b>1</b> <b>(lowest)</b> Basic Laboratory, clean open bench, no BSC needed (unlikely to cause disease in healthy workers/animals/plants)	Low	Low	-non-infectious bacteria -E. coli -Lactobacillus spp.
<b>2</b> Biological safety cabinet needed Pathogens spread via ingestion, inoculation and mucous membrane routes	Moderate	Low	-Influenza virus -Herpes simplex -Hepatitis (A, B, C, D, E) -Tetanus
<b>3</b> Pathogen transmitted by aerosols HEPA filtration required, respiratory protection	High	Low	-Hepatitis (some C's) -West Nile -Anthrax -TB
<b>4</b> <b>(highest)</b> serious human disease that may not be treatable, easily transmitted self-contained lab	High	High	-Ebola virus -Herpes B

BMC 23.206.080.B.5<sup>12</sup> reads:

*Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. The BMC is silent on BSL regulations in districts other than MU-LI, or for non-laboratory uses such as research and development.

A preliminary review finds that the City of Berkeley is more restrictive than other Bay Area cities in our regulation of Biosafety Levels. For example, the Cities of Emeryville,

<sup>11</sup> <https://www.safetypartnersinc.com/are-biosafety-levels-and-risk-groups-the-same/#:~:text=Biosafety%20levels%20prescribe%20the%20work,level%20for%20a%20particular%20agent.>

<sup>12</sup> <https://berkeley.municipal.codes/BMC/23.206.080>

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San Jose, Mountain View, Alameda, San Leandro, South San Francisco, and San Mateo do not reference BSLs or Risk Groups in their zoning ordinances. The Cities of Fremont, Oakland, Palo Alto, and San Francisco permit BSL-1, BSL-2, and BSL-3 (or the Risk Group equivalents) in varying degrees. See Attachment 2.

Moreover, laboratories that work with Risk Group 1-3 agents are already allowed on the UC Berkeley campus. Most campus experiments use agents classified as Risk Group 1 or 2, although work with Risk Group 3 is permitted with a biological use authorization (BUA) application approved by UC Berkeley's Committee for Laboratory and Environmental Biosafety.<sup>13</sup>

Staff and the Commission should conduct further research into nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological research facilities where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

***Recommendation #5:*** *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant

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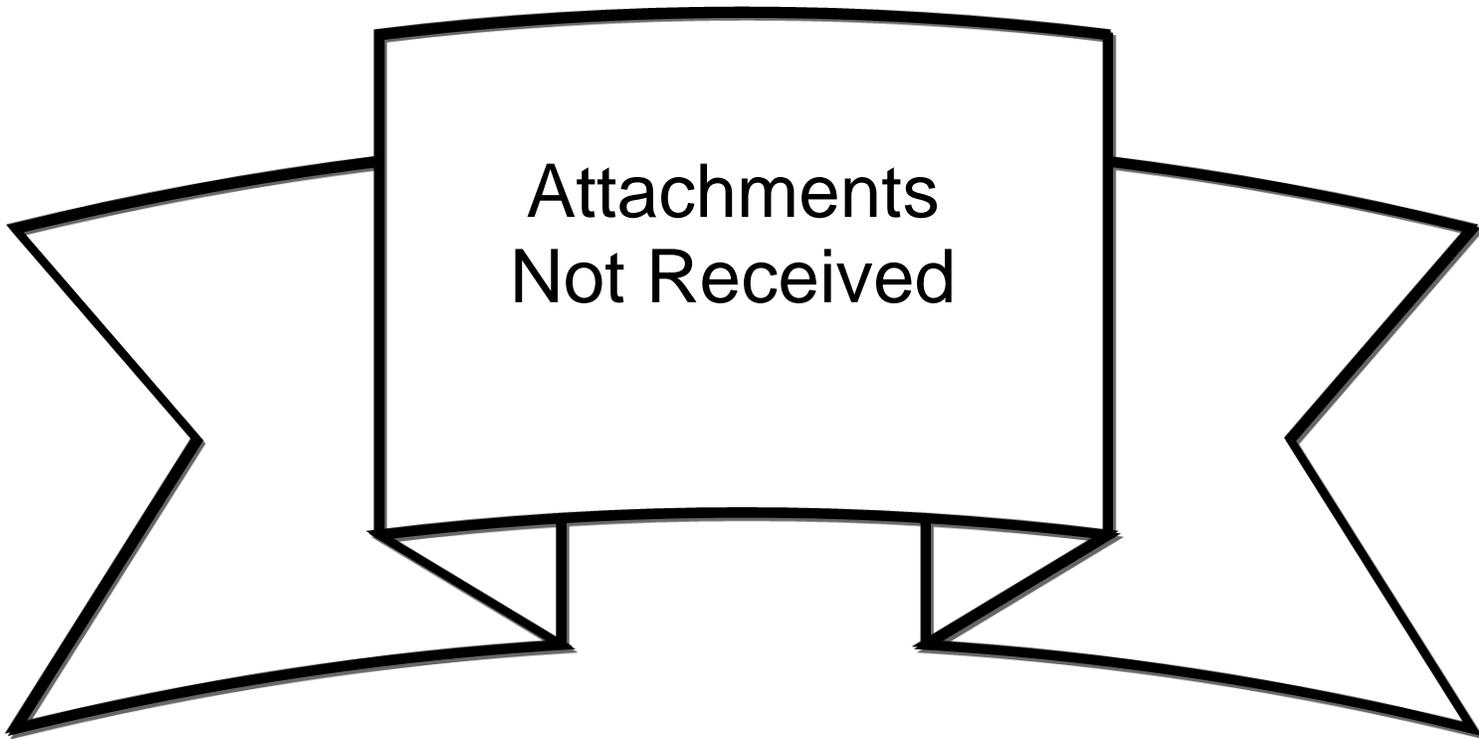
<sup>13</sup> <https://ehs.berkeley.edu/sites/default/files/biosafetymanual.pdf>

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**Attachments:**

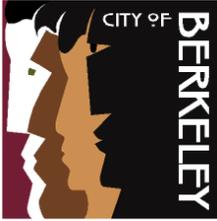
- 1: City of Fremont performance standards
- 2: BSL regulations in neighboring jurisdictions



These attachments have not been received from the submitting office.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Web site:**  
<http://www.cityofberkeley.info/citycouncil/>



**Planning and Development Department**  
Land Use Planning Division

STAFF REPORT

May 1, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Planning and Development Department

SUBJECT: Referral Response: Keep Innovation in Berkeley *or* Zoning Amendments to Support Innovation in Berkeley

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RECOMMENDATION

Staff recommends the Planning Commission receive a staff report, public comment, discuss the proposed amendments, and provide direction to staff to prepare zoning ordinance amendments for Planning Commission recommendation to the City Council.

In response to a 2022 City Council referral (**Attachment 2**), City staff have prepared zoning ordinance amendments (**Attachment 1**) that include the following:

1. Permit Research and Development (R&D) with a Zoning Certificate (ZC), for uses 20,000 square feet and under, in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), and C-DMU (Downtown Mixed-Use) zoning districts.
2. Revise the “District Purpose” sections of the MM (Mixed Manufacturing) and MU-LI (Mixed Use-Light Industrial) zoning districts to specifically encourage R&D.
3. Revise minimum parking requirements for R&D uses.

In addition, staff is asking the Planning Commission to provide direction on the revision or removal of the regulation of Biosafety Level (BSL) in the Zoning Ordinance.

## CURRENT SITUATION AND ITS EFFECTS

Zoning Amendments to Support Innovation in Berkeley  
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Item 10  
May 1, 2024

Research and outreach conducted by the City's Office of Economic Development (OED) indicates that firms engaged in R&D operate differently than they did in past decades, and current permit thresholds and land use requirements may not have kept pace with the state of the art in the R&D sector. Berkeley business owners and operators, industry groups, educational institutions, and innovation sector leaders shared their experiences where land use regulations in Berkeley for R&D were more restrictive or cumbersome than in neighboring jurisdictions, and how, in some cases, lack of clarity was a deterrent to locating or growing their business in Berkeley. This is especially true for startups, early-stage R&D businesses, or small enterprises without the expertise or financial runway to navigate the existing permitting process, but are yet keen to locate in Berkeley to be close to the talent, innovation, educational, and research opportunities afforded by UC Berkeley, Lawrence Berkeley National Lab and other anchor institutions.

## BACKGROUND

In response to this September 13, 2022 referral (*Keep Innovation in Berkeley*), and previous work on the March 10, 2020 referral to *Update the Definition of Research and Development*, OED gathered input from a number of business operators and leaders in the biotechnology, clean technology and other R&D industries that are innovating locally. They were asked about their experiences, challenges and perceptions of innovating and conducting business in Berkeley, including their experience with the city's existing land use policies and business permitting processes.

For example, the March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. Prior to the update, the former definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The revised definition of Research & Development (R&D) adopted in 2022 successfully reflects evolving business practices and provides flexibility for R&D establishments to occupy spaces that meet their operating needs. During the initial outreach for the development of the updated definition of R&D, conducted between 2020 and 2022, a number of additional requested changes surfaced, which were reflected in the September 2022 referral "Keep Innovation in Berkeley."

On September 13, 2022, City Council referred Planning Commission a set of four items and accompanying zoning changes to provide relief from regulations that are "inhibit[ing] innovation in Berkeley."

The proposed zoning ordinance amendments are summarized in Table 1, below. They are based on examples from zoning codes in nearby cities (as well as other cities with a

critical mass of innovation companies), and conversations with local real estate professionals, property owners, industry associations (e.g. Biocom California), small business owners, technology startup founders, established innovation company leaders, and other industry stakeholders.

**Table 1 Referral Actions and Zoning Ordinance Amendments**

Referral Action	BMC Section(s)
<p><b>Permit R&amp;D with a Zoning Certificate (ZC)</b>, in the C-T, C-C, C-W, C-U, and C-DMU zoning districts. (Attachment 2 Referral, dated 9/13/22)</p>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p> <p>23.204.040(G) Use-Specific Permit Requirements and Regulations</p>
<p><b>Add R&amp;D to District Purpose Statements in MM and MU-LI districts.</b> Update the District Purpose sections of the MM and MU-LI districts to specifically encourage R&amp;D. (Attachment 2 Referral, dated 9/13/22)</p>	<p>23.206.070 A                      MM Mixed Manufacturing District.</p> <p>23.206.080 A                      MU-LI Mixed Use-Light Industrial District.</p>
<p><b>Revise Parking Requirements for R&amp;D uses.</b> (Attachment 2 Referral, dated 9/13/22)</p>	<p>23.322.030 Required Parking Spaces</p> <p>Table 23.322-4</p> <p>Table 23.322-2</p>

**DISCUSSION**

The proposed Zoning Ordinance amendments are intended to encourage the growth and retention of innovative companies in Berkeley by reducing permit review processing times for R&D uses. In addition to providing jobs and fueling economic development locally, R&D companies create solutions that improve human health and community well-being, combat climate change, and address other social and environmental challenges. OED has indicated that there is a clear demand for R&D space from companies who have grown out of their facilities on the UC Berkeley campus, or in local

incubators and coworking spaces.<sup>1</sup> These companies seek to grow their enterprises close to UC Berkeley and/or Lawrence Berkeley National Laboratory (LBNL) talent, facilities and entrepreneur support programs. Neighboring jurisdictions including Oakland, Emeryville, San Leandro, and Alameda have a wider selection of eligible real estate opportunities. Updated zoning codes which permit R&D uses and streamlined permitting processes will give the City of Berkeley a competitive advantage for business retention and attraction.

The 2023 Berkeley Economic Dashboard (published in Q1 2024) reported robust growth opportunities in the innovation sector. As of Dec. 2023, the City of Berkeley had 400 businesses in the “innovation sector”. The number included 325 startups<sup>2</sup> in technology, biotechnology, clean technology and other technology industries, as well as established and subsidiary companies conducting R&D, incubators and coworking facilities supporting the local innovation ecosystem, and other STEM (science, technology, engineering and math) industry consulting companies. In addition to early-stage startups focused on new product design and development, the “innovation sector” includes established businesses such as Bayer, which unveiled a new Cell Therapy Launch Facility in 2023, and subsidiary companies like Carmot Therapeutics, a startup which was acquired in 2023 by the multinational firm, Roche Pharmaceutical.

Of Berkeley’s innovation companies, 35% develop life science and healthcare technologies, 32% develop software, and 14% develop clean technologies to support environmental sustainability and address climate change. In addition to creating local jobs, these companies create new wealth for our community: in 2023 alone, 84 Berkeley companies raised \$840 million of venture and seed capital and 11 companies received nearly \$17 million in federal and state government grants for R&D.

To allow startups and R&D companies to bring economic benefits to the economy citywide, staff recommends the following:

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<sup>1</sup> City of Berkeley, Office of Economic Development (OED), [Berkeley’s Innovation Ecosystem](#), published to the Berkeley Planning Commission, February 1, 2023.

<sup>2</sup> Startups are defined as companies or for-profit businesses that sell innovative technology products or services or substantively use innovative technologies to develop and manufacture their products or provide their services and are developing repeatable and scalable business models that aren’t yet profitable.

### *Proposed Zoning Ordinance Amendments*

- 1. Recommendation:** Permit R&D with a Zoning Certificate, in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), and C-DMU (Downtown Mixed-Use) zoning districts.

### *Permit Requirements*

Currently, R&D is permitted in three zoning districts across the city: the C-W zoning district (with an Administrative Use Permit (AUP)) and the MM and MU-LI zoning districts (with a Zoning Certificate if under 20,000 square feet and an AUP if over 20,000 square feet). The C-T, C-C, and the C-DMU zoning districts currently allow R&D uses with an AUP with additional findings, despite being the zoning districts closest to UC Berkeley. Allowing R&D spaces under 20,000 square feet to be permitted with a ZC close to campus would encourage businesses looking to relocate off campus and/or access the labor pool of university students, professors, and others who spend a portion of the work week at UC Berkeley and LBNL. Allowing R&D uses by right in these districts would create opportunities to retain local the innovation and talent. Furthermore, permitting R&D in the University Avenue commercial corridor (C-U) would play an important role in connecting West Berkeley and UC Berkeley, the city's two primary hubs of innovation.<sup>3</sup> Including a threshold of 20,000 square feet for such projects would also ensure that larger R&D uses would be subject to additional staff analysis. This threshold mirrors the requirements in the MM and MU-LI zoning districts for R&D uses.

### *Considerations for R&D Uses*

Noise, odors and safety are evaluated when permitting R&D uses in commercial districts due to their mixed-use character and proximity to residential districts. All businesses in Berkeley are required to comply with the Community Noise Ordinance (BMC Chapter 13.40), which includes specific noise thresholds, as well as a general rule prohibiting excessive noise. In addition, BMC Chapter 23.304.130 (Non-Residential Districts

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<sup>3</sup> See map of Berkeley's innovation sector companies here: <https://berkeleystartupcluster.com/startups/> (February 2024).

Abutting a Residential District) includes a specific requirement that exhaust air ducts include equipment that mitigates odors.

Companies that use hazardous materials or produce hazardous waste may be required to create plans and follow Federal, State and local regulations. These regulations are enforced by a Certified Unified Program Agency (CUPA), a local agency certified by the California Environmental Protection Agency (CalEPA). The City's Toxics Management Division (TMD) is the CUPA for Berkeley and it oversees subsurface drilling and stormwater pollution prevention, in addition to reviewing plans and enforces five state hazardous waste and materials regulatory management programs:

- Hazardous Materials Business Plan (HMBP);
- Hazardous Waste and Tier Permitting, including the Hazardous Waste Generator (HWG) program;
- Aboveground Petroleum Storage Act (APSA) ;
- California Accidental Release Prevention (CalARP); and
- Underground Storage Tank (UST)

These plans and permits ensure that the City has an accurate inventory of hazardous materials, and that they are being stored and disposed of in ways that ensure community health and safety, as well as ensure businesses follow environmental best practices.

In addition, the City of Berkeley's Fire Prevention Division enforces the Fire Code, the Building Department enforces the Building Code and Environmental Health permits and inspects food handling.

After receiving preliminary signoff by the above-mentioned departments for a business license and operational permit, any R&D company using hazardous materials is required to create a HMBP and renew it annually. The Fire Code defines the quantities of different types of chemicals that require an operational permit. The Fire Department also inspects facilities and issues permits based on the quantity of specific chemicals that are stored on site or transported through pipes within a facility. A company with a laboratory is also subject to inspection at any time by the State of California Division of Occupational Safety and Health (Cal/OSHA) and thus these types of companies often hire an Environmental Health and Safety compliance specialist to perform routine internal audits.

In some innovation industries, the health and safety regulatory environment is more comprehensive and inspections are more frequent. For example, a company producing medical waste must also create a Medical Waste Management Plan and have it certified annually, subject to inspection by TMD and Cal/OSHA. A laboratory developing antibiotics, hormones, vaccines, fuels, foods, or other bio-based substances in Berkeley may be subject to additional regulatory requirements, protocols, inspections, certifications, licenses, accreditations, and audits by the following organizations:

- Food & Drug Administration (if food or medicines are produced);
- International Organization for Standardization (ISO) (if a regulated product is produced);
- Drug Enforcement Administration (if controlled substances are required by the company);
- Centers for Disease Control (if using special biologic agents and drugs);
- Centers for Medicare and Medicaid Services (after product approval);
- Bay Area Air Quality Management (if the building has a generator);
- United States Department of Agriculture (if research involves animals and plants);
- National Institutes of Health (if a federal R&D grant has been awarded);
- Office of Laboratory Animal Welfare (if granted a R&D award involving animal research); or
- California Department of Public Health (if clinical trials involve human subjects).

There may still be instances, particularly with larger projects, where additional staff analysis of these areas may be warranted. Therefore, the proposed zoning amendments include a requirement that proposed facilities that are 20,000 square feet or larger require an AUP. This additional discretionary process would allow the imposition of conditions of approval if staff analysis concludes that noise, odor or safety issues could not be adequately addressed through existing regulations.

**2. Recommendation: Update the District Purposes” of the MM and MU-LI zoning districts to specifically encourage R&D.**

The District Purpose sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses characterize the district and the types of uses that are encouraged to further the City’s goals. In the MM and MU-LI zoning districts, where R&D is currently permitted with a Zoning Certificate for uses less than 20,000 square

feet, the Purpose sections do not mention “R&D”, despite calling out similar uses, such as manufacturing, industrial, and laboratory, by name.

Specific land uses should be included in a zoning district’s Purpose statement if city policy is to encourage those uses. When approving an AUP for any use, the Zoning Officer or Zoning Adjustment Board must find that the proposed use is compatible with the Purposes of the district in which the business would be located. An explicit mention of R&D would increase an applicant’s confidence that their proposal would be accepted.

The proposed Zoning Ordinance amendments include the following changes:

**23.206.070 MM Mixed Manufacturing District.**

A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:

... 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;

... 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses.

**23.206.080 MU-LI Mixed Use-Light Industrial District.**

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

... 7. Provide the opportunity for laboratory development and research and development facilities in appropriate locations;

**3. Recommendation: Revise on-site parking requirements for R&D uses in manufacturing and commercial zoning districts.**

BMC 23.322.030 (Required Parking Spaces) details the minimum off-street parking spaces required for each use. Currently, in manufacturing zoning districts, R&D uses are required to provide 2 spaces per 1,000 square feet of floor area. In contrast, laboratory uses require 1 space per 650 square feet of floor area. R&D uses typically include similar numbers of employees and visitors per square foot as laboratory uses, and R&D uses are often at a disadvantage when required to provide more parking. The proposed zoning amendments include revising the off-street parking requirements for R&D uses to 1 space per 1,000 square feet of floor area to bring the standard closer to that for laboratories.

Notwithstanding the proposed change, BMC Section 23.322.020.D (Applicability-Location Exemption) reflects recent State law (AB 2097) changes that prohibit a public agency from imposing any minimum automobile parking requirement on most residential, commercial, or other development project that is located within 1/2 mile of public transit. Like most other uses, R&D uses proposed within these areas would have no required off-street parking.

***Discussion: Revision or removal of the regulation of Biosafety Level (BSL) class organisms from the Zoning Ordinance.***

Biological Safety Levels (BSL) are defined by the Centers for Disease Control (CDC) and the National Institute of Health (NIH) to prescribe the work practices, engineering controls, personal protective equipment, and facility requirements required for working with biological agents in a lab setting. BSL levels, ranked from one to four (BSL-1 to BSL-4), are designated based on the agents or organisms that are being researched or used in the laboratory and the level of risk associated with them, as determined by the CDC and NIH. The lower the number, the lower the risk, where the factors considered in the rating include the nature of the work conducted and the infectivity, severity of disease, and transmissibility associated with the biological agents used in the lab.

BSL regulations govern the overall design of facilities, as well as the types of required on-site safety equipment. For example, in a BSL-1 lab, the microbes studied are not known to consistently cause disease in healthy adults and present minimal potential hazard to lab workers or the environment. As such, a BSL-1 lab is not required to be

isolated from surrounding facilities, and is permitted to house activities that require only standard microbial practices, such as biohazard signs, safe sharps handling, daily decontamination of all work surfaces, hand washing, prohibition of food, drink and smoking materials in the lab setting, and staff wearing personal protective equipment (PPE) such as eye protection, gloves and lab coats or gowns.

BSL-2 labs, however, are required to maintain the same standard microbial practices as BSL-1 labs, but must include enhanced measures such as: performing all procedures that can cause infection from aerosols or splashes within a biological safety cabinet (BSC), having an autoclave, or an alternative method of decontamination, for proper disposal, having self-closing, lockable doors to the laboratory, and providing a readily-available sink and eyewash station. BSL-2 labs are typically utilized by biotechnology companies and are ubiquitous on research university campuses such as UC Berkeley. BSL-3 labs (of which there is only one in California) and BSL-4 labs (of which there are none in California and just over a handful nationwide),<sup>4</sup> accordingly have more stringent requirements, and the lab setting is often strictly controlled by a number of government agencies.

The Zoning Ordinance currently includes references to BSL in two sections:

- BMC Section 23.206.080.B.5 (MU-LI Mixed Use-Light Industrial Districts – Land Use Regulations) states:
  - 5. *Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.
- BMC Section 23.502.020 (Glossary-Defined Terms) includes BSL in the definition of Laboratories:
  - 1. Laboratories.
    - (a) Commercial Physical or Biological. A facility that provides controlled conditions in which scientific or technological research, experiments, and measurement may be performed.

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<sup>4</sup> Global locations of BSL 3-4 labs can be viewed here: <https://www.globalbiolabs.org/map>

(b) Cannabis Testing. A facility for the testing of the properties of cannabis intended for consumer use.

(c) Class 1 Organism. A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.

(d) Class 2 Organism. A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.

(e) Class 3 Organism. A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.

Staff has reviewed the zoning ordinances for a number of Bay Area jurisdictions,<sup>5</sup> as well as other cities across the country that support a broad range of R&D uses, such as Sacramento, San Diego, and Cambridge, Massachusetts, and has found that the City of Berkeley's regulation of BSL activities is more restrictive than all of these jurisdictions, as most nearby jurisdictions do not note BSL at all in their zoning ordinances.<sup>6</sup> As mentioned above, health, safety, toxic substances and hazardous materials regulations at the city, state and federal levels typically regulate labs, not local zoning ordinances. Further, UC Berkeley, comprising more than 1,200 acres within the city of Berkeley, has many labs utilizing class 2 organisms within 500 feet from other types of buildings, including student housing and classrooms, and has not encountered safety problems associated with such co-location.

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<sup>5</sup> Alameda, Belmont, East Palo Alto, Emeryville, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Oakland, Redwood City, San Bruno, San Francisco, San Leandro, San Jose, San Mateo, Santa Clara, and South San Francisco.

<sup>6</sup> Alameda, Belmont, East Palo Alto, Emeryville, Hayward, Menlo Park, Millbrae, Milpitas, Mountain View, Sacramento, San Bruno, San Jose, San Leandro, San Mateo, Santa Clara, and South San Francisco, do not reference BSLs or organism risk groups at all in their zoning ordinances. Oakland prohibits only BSL-4; Palo Alto permits up to BSL-3; and Richmond permits BSL-3 with a conditional use permit.

The prevalence of potentially hazardous materials has been a longstanding community concern in Berkeley, particularly in areas covered by the West Berkeley Plan that include manufacturing uses in proximity to residential uses. However, the West Berkeley Plan includes a policy to “periodically review the City’s regulation of biotechnology to assure that it both meets City regulatory objectives and does not unnecessarily interfere with the creation and expansion of biotechnology firms.”

As detailed under recommendation #1, above, biological, chemical and hazardous materials are typically regulated under existing Federal, state and local regulations. Consistent with ongoing efforts to streamline and simplify land use regulations, staff is considering revising or removing BSL-related regulations in the Zoning Ordinance that may be duplicitous of other existing regulations. There is also the possibility that Berkeley’s additional limitations on laboratory uses may put the city at a competitive disadvantage compared to nearby jurisdictions that do not supplement existing regulations with city-specific regulations.

Staff requests that the Planning Commission provide direction to staff on the possible revision or removal of BSL-related regulations in the Zoning Ordinance.

#### NEXT STEPS

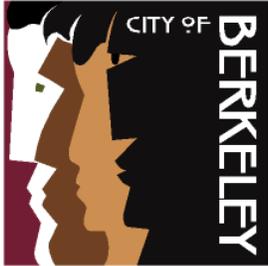
Based upon Planning Commission feedback, staff will revise zoning ordinance amendments (**Attachment 1**) and prepare for a public hearing at Planning Commission and subsequent recommendation to the City Council.

#### CONTACT PERSON

Justin Horner, Planning and Development Department, 510-981-7476

#### Attachments:

- 1: Proposed Zoning Ordinance Amendments
- 2: City of Berkeley, *Referral: Keep Innovation in Berkeley*, Item 30, Berkeley City Council, September 13, 2022.



# PLANNING COMMISSION

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## Notice of Public Hearing

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### Wednesday, July 17, 2024

### Adoption of Zoning Amendments to Keep Innovation in Berkeley

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, July 17, 2024 at 6:00 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). In accordance with the Brown Act, Planning Commission meetings will be held in person only.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5:00 p.m. on Friday, March 29, 2024.

#### PROJECT DESCRIPTION

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In response to the September 13, 2022 City Council referral *Keep Innovation in Berkeley*, staff is proposing zoning ordinance amendments to encourage Research and Development (R&D) uses in the City of Berkeley. Proposed zoning ordinance amendments would revise permit requirements in a number of commercial districts; revise the District Purpose statements for the Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MU-LI) zoning districts to specifically encourage R&D; remove the regulation of Biosafety Level (BSL) from the zoning ordinance; revise minimum off-street parking requirements for R&D uses; and revise the definition of Laboratory use.

**LOCATION:** The proposed zoning ordinance amendments would apply to all parcels currently located in in the C-T (Telegraph Avenue Commercial), C-C (Corridor Commercial), C-W (West Berkeley Commercial), C-U (University Commercial), C-NS (North Shattuck Commercial) and C-DMU (Downtown Mixed-Use), MM and MU-LI zoning districts. The zoning map is available online:

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Base%20Data;Planning%20and%20Building>

#### ENVIRONMENTAL REVIEW STATUS

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The proposed zoning ordinance amendments revise permit requirements for uses already permitted and include other regulatory changes related to parking, Biosafety Level and definitions within the zoning ordinance. The proposed zoning ordinance amendments apply only to the operations of existing public and private structures and facilities, and thus are categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"). The proposed zoning ordinance amendments do not include any allowances for additional development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA.

#### PUBLIC COMMENT & FURTHER INFORMATION

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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@berkeleyca.gov](mailto:PlanningPC@berkeleyca.gov)

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

Correspondence received by **12pm on Tuesday, July 9, 2024**, 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, July 15, 2024** 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 on Tuesday, July 16, 2024** 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 on Tuesday, July 16, 2024** 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**

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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 online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

### **FURTHER INFORMATION**

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Questions should be directed to Justin Horner, at (510) 981-7476 or [jhorner@berkeleyca.gov](mailto: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>.

## Communication

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**From:** Bernard Marszalek <ztangi@lmi.net>  
**Sent:** Wednesday, June 5, 2024 9:40 PM  
**To:** Planning Commission  
**Subject:** Berkeley Public Eye (BPE) You Yube channel

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Greetings,

Several Commissioners asked about BPE's video coverage. Please ff'd the link to the May 1, 2024 meeting to all the Commissioners.

---> [https://youtu.be/rjqB62h\\_vlQ?si=p6TfkdgSWghFYpTM](https://youtu.be/rjqB62h_vlQ?si=p6TfkdgSWghFYpTM)

Within a week we should have the June 5th meeting uploaded.

Our email address: **BPEorg** - [bpeorg2024@gmail.com](mailto:bpeorg2024@gmail.com)

Thank you,

-bernard

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Bernard Marszalek • 510-693-5760 • Berkeley, CA 94703