

Item 35: Public Hearing on Adoption of the Baseline Zoning Ordinance (BZO)

Justin Horner, Associate Planner
Berkeley City Council, September 14, 2021



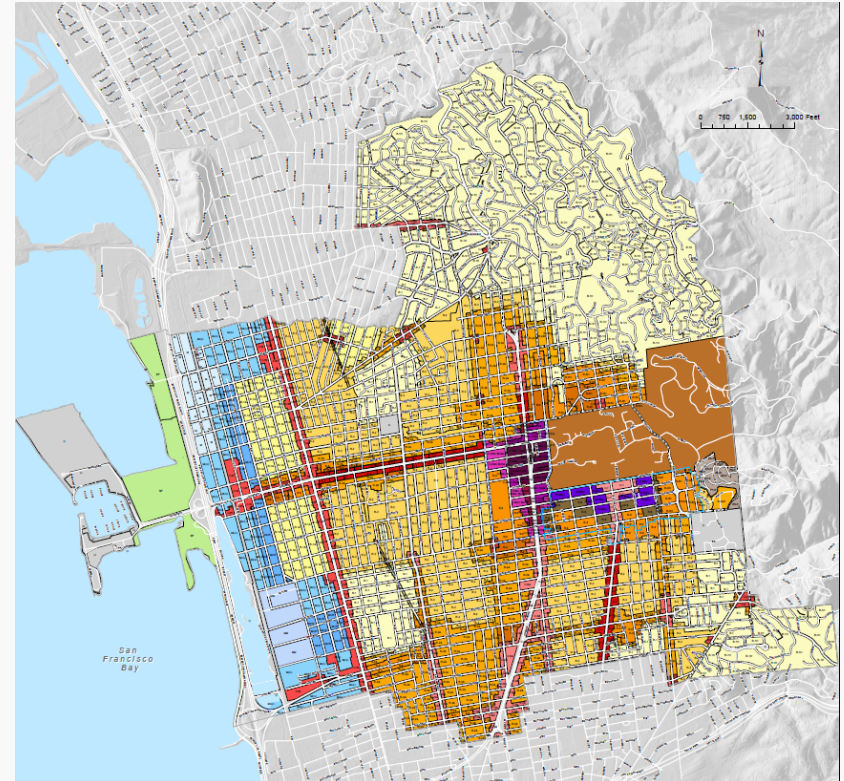
Outline

1. Background
2. Preparation of the BZO
3. Summary of the BZO
4. Outreach and Feedback
5. Recommendation
6. Questions



Background: Zoning Ordinance (Title 23 BMC)

- Adopted in 1999
- Many amendments over time
- Too complex and confusing
- Lack of consistency and clarity
- Difficult to administer
- City Council Referral (2016)





BZO Preparation



- City Council Referral
- Zucker Systems Report
- City of Berkeley Strategic Plan

- Review of Zoning Ordinance and Zoning Interpretations
- Interviews with staff planners
- Review of other jurisdictions
- BZO Style Guide

- ZAB and Planning Commission subcommittees
- Berkeley Considers survey, project website and staff outreach
- Zoning Adjustments Board review
- Planning Commission public hearing
- QC revisions and additional edits





BZO Goals

- Improved writing and presentation only
- Easy to understand
- Easy to find what you are looking for
- Clear which rules apply to a project or property
- Important rules are prominent and not hidden
- Easy to maintain and can be added to over time





A Strategic Plan Priority



Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.



Provide an efficient and financially-healthy City government.



Foster a dynamic, sustainable, and locally-based economy.



Create affordable housing and housing support services for our most vulnerable community members.



Future Priority Projects

- Establish Ashby and North Berkeley BART zoning standards
- Update Housing Element
- End exclusionary zoning
- Develop objective design standards

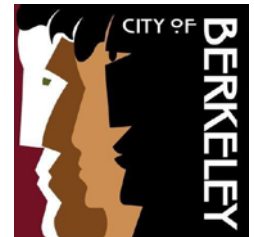
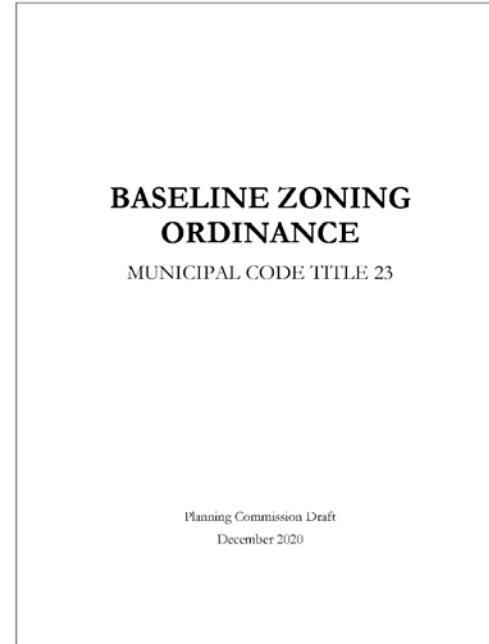




What is the BZO?

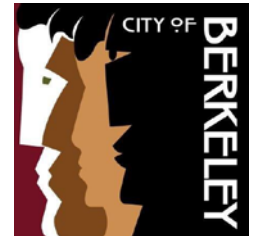
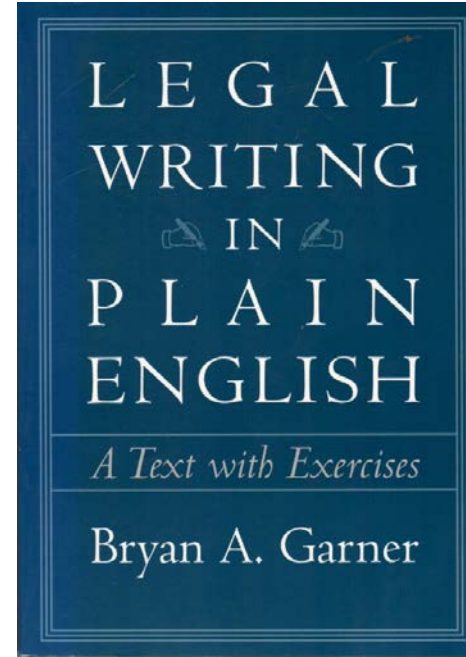
Structural changes to Existing Zoning Ordinance to achieve BZO Objectives:

- User-friendly writing style
- Organization and format improvements
- Maintain current substance



User-Friendly Writing Style

- Short sentences and paragraphs
- Simply and direct grammatical structures
- Consistent use of familiar everyday language
- Frequent use of tables



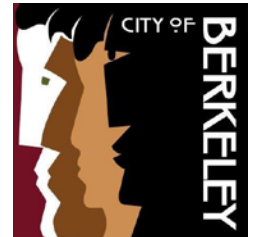
Existing Section 23B.44.010 Variances

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings, the percentage of lot coverage, or the parking space requirements when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.

BZO Section 23.406.050 - Variances

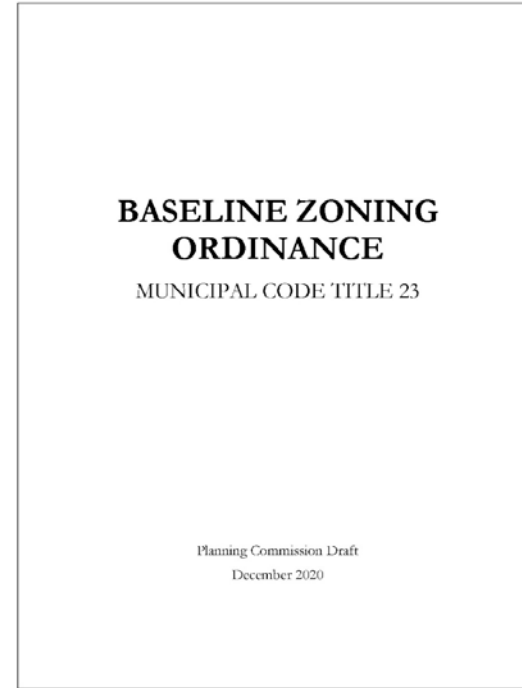
B. When Allowed

1. **Deviations Allowed with a Variance.** The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.
2. **Deviations Allowed with a Use Permit.** The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
 - a. The property is 30 feet or less from an open creek; and
 - b. Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).



New Organization to Reduce Repetition

- Sub-titles consolidated into single title
- Five divisions
 - Division 1: General Provisions
 - Division 2: Zoning Districts
 - Division 3: Citywide Provisions
 - Division 4: Permits and Administration
 - Division 5: Glossary



New Organization to Reduce Repetition

Existing

23D.16: R-1

23D.20: R-1A

23D.24: ES-R

23D.28: R-2

23D.32: R-2A

23D.36: R-3

23D.40: R-4

23D.44: R-5

23D.48: R-S

23D.52: R-SMU



New

23.202: Residential Districts

23.302: Supplemental Use Regulations

23.304: General Development Standards



New Organization to Reduce Repetition

Requirements that apply to multiple districts are stated once rather than repeated for each district.

Table 23.206.030-2: TENANT SPACE RECONFIGURATION PERMIT REQUIREMENTS IN THE M, MM, MU-LI DISTRICTS

Tenant Space Reconfiguration Project	Permit Required for Tenant Space Reconfiguration Project
Previously separated spaces combined into a larger space	ZC
Creating 2 to 5 separate new tenant spaces	ZC
Creating 6 to 9 separate new tenant spaces	AUP
Creating 10 or more separate new tenant spaces	UP(PH)



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

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

Areas east of Telegraph

The complete blocks bounded by:

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

The partial blocks bounded by:

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

Additional properties as described below:

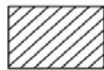
- The properties abutting the east side of Bowditch Street between Dwight Way and Haste Street;
- The properties abutting the south side of Dwight Way between Piedmont Crescent and Regent Street, and also including the parcels with the following addresses or parcel number: 2508 Benvenue, 2514-2516 Benvenue,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



BZO Maps



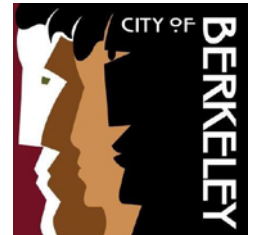
Multiple-family
Residential
(R-3)



Design Review
In Southside
Plan Area

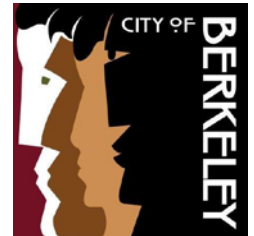
Parcel boundaries as of [adoption date]

Maps supplement text
descriptions of
geographic areas



Allowed Use Tables

- Allowed land use tables for each individual district are combined for the residential, commercial, and manufacturing district chapters
- Removed from existing tables:
 - Permit requirements for activities and structures that are not land uses are removed from tables
 - Fine-grained and complex permit requirements



Existing R-1 Allowed Use Table

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

Separate tables for each district

Table 23D.16.030 (Continued)

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)		23D.16.070 for restrictions.
Major Residential Additions		Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.16.050

Contains permit requirements for non-land uses

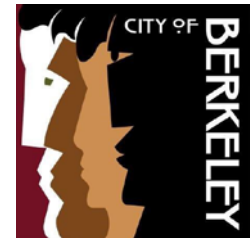


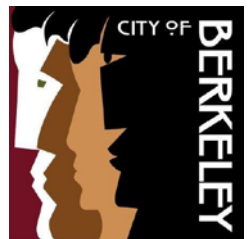
TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply	RESIDENTIAL DISTRICTS										AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU		
Residential Uses												
Accessory Dwelling Unit	See 23.306—Accessory Dwelling Units		NP	See 23.306—Accessory Dwelling Units								
Dwellings												
Single-Family	UP	Consistent terminology		UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Two-Family	UP			UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Multi-Family	UP			UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Group Living Accommodation	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Senior Congregate Housing	NP	NP	NP	NP	See 23.302.070.H—Use-Specific Regulations							
Mixed-Use Residential	NP	NP	NP									
Public and Quasi-Public Uses												
Child Care Center	UP(PH)	UP(PH)	NP									
Club/Lodge	UP(PH)	UP(PH)	NP									
Columbaria	AUP*	AUP*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.302.070.C—Use-Specific Regulations
Community Care Facility	See 23.202.040.A—Use-Specific Regulations											
Community Center	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	NP	NP	NP	NP	NP	NP	See 23.308					
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)		
Library	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Nursing Home	NP	NP	NP	—	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	UP	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	

One table for all residential districts

Consistent terminology

Contains only land uses; non-uses (e.g., fences) removed



Maintaining Existing Substance

- Careful line-by-line review of existing Zoning Ordinance
- System to ensure all existing content is carried forward
- City staff and ZAB and PC Subcommittee review

23.412

ZONING ORDINANCE AMENDMENTS

Sections:

23.412.010 – Purpose
23.412.020 – Initiation
23.412.030 – Application
23.412.040 – Planning Commission Hearing and Action
23.412.050 – City Council Hearing and Action
23.412.060 – Findings for Approval
23.412.070 – Limitations on Resubmittals after Denial
23.412.080 – Zoning Map Amendments

23.412.010 – PURPOSE¹

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

23.412.020 – INITIATION²

A. Zoning Map Amendment. A Zoning Map amendment may be initiated by:

1. Resolution of the City Council or Planning Commission; or
2. Application of one or more owners of the property for which the amendment is sought.

B. Zoning Ordinance Text Amendment. A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

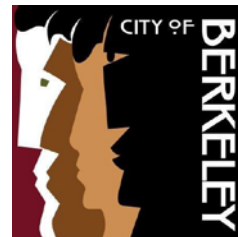
23.412.030 – APPLICATION³

An application for a Zoning Map Amendment submitted by a property owner shall be filed and reviewed in compliance with Section 23.404.020 (Application Submittal and Review). The application shall include the information and materials required by the Planning and Development Department, together with all required application fees.

¹ Reference to Government Code is new.

² See Public 23A.20.020, Revises 23A.20.020.AQR.1 to remove detail on contents of resolutions. Requires property owner to initiate applicant-initiated map amendment. Deletes 23A.20.020.C about amendments initiated without a public hearing.

³ Re-writes second sentence of 23A.20.020.H.2 for clarity. Clarifies that application requirements apply only to applications submitted by property owner, not City-initiated amendments.



23.412

ZONING ORDINANCE AMENDMENTS

Sections:

- 23.412.010 – Purpose
- 23.412.020 – Initiation
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- 23.412.070 – Limitations on Resubmittals after Denial
- 23.412.080 – Zoning Map Amendment Notations

Commentary: Existing Chapter 23A.20 (Zoning Ordinance Amendments) contains numerous requirements that conflict with state law and current City practice. These requirements have been changed and noted as Consent Changes.

23.412.010 – PURPOSE¹

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

23.412.020 – INITIATION²

A. Zoning Map Amendment.³ A Zoning Map amendment may be initiated by:

1. Resolution of the City Council or Planning Commission; or
2. Application of one or more owners of the property for which the amendment is sought.

B. Zoning Ordinance Text Amendment.⁴ A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

¹ Source: 23A.20.010, first sentence. Reference to Government Code is new.

² CONSENT CHANGE: Deletes 23A.20.020.C which allowed for amendments initiated without a public hearing. This is not permitted under state law.

³ Source: 23A.20.020.B. Removes detail on contents of resolution and requires property owner to initiate applicant-initiated map amendment.

⁴ Source: 23A.20.020.A. Removes detail on contents of resolution.

¹ Source: 23A.20.010, first sentence. Reference to Government Code is new.

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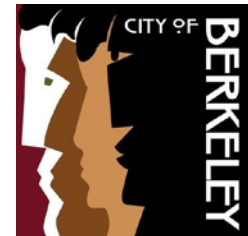
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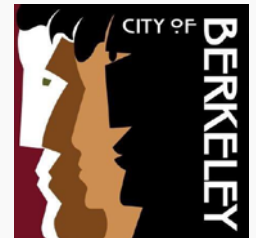
BASELINE ZONING ORDINANCE CONSENT CHANGES

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.102 – Introductory Provisions				
Effective Date	Statement of when the Ordinance becomes effective	23.102.020	NEW	Provide effective date
Authority	States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law	23.102.030	NEW	Added for clarity
Laws of Other Agencies	Removes statement that uses and structures must comply with regulations and laws of other governmental agencies.	23.102.050.B	23B.56.040	It is unnecessary to state that uses and structures must comply with the law. Removed for clarity
Approvals Required	Describes approvals required for land uses and development	23.102.050 D	NEW	Expands on existing Section 23A.12.010 to reflect current practice
Conflict with State or Federal Regulations	Explains how to handle conflicts with State and Fed law	23.102.070	NEW	Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution
Conflicts with Other City Regulations	New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.”	23.102.070.B	NEW	Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations.
Conflicts with Private Agreements	Adds statement that the City is not responsible for monitoring or enforcing private agreements.	23.102.070.C	NEW	Clarifies City role in neighbor disputes involving private agreements
Pending Applications	Clarifies status of applications submitted during transition from ZO to BZO	23.102.080 C	NEW	Necessary to inform status of applications submitted during transition to BZO
Nonconformities	Defines what is considered nonconforming at the time of BZO adoption	23.102.080 E	NEW	Adds up-front reference to nonconformity chapter alongside other transitional provisions



BZO Review and Feedback

January 2018 – July 2020	Joint Subcommittees of the Zoning Adjustments Board and Planning Commission
July – August 2020	Outreach to frequent applicants
August 2020	Presentation to ZAB
September 2020	Planning Commission meeting
	Berkeley Considers survey
December 2020	Planning Commission public hearing



Review and Testing of BZO: 2021

- Review, text editing and QA/QC
- Formatting, cross-referencing and hyperlinking
- Targeted review of development standards across districts
- Current Planner testing of the BZO



Timeliness of the BZO

- Extensive preparation and review process
- State requirements for Long Range and Special Projects
 - Ashby and North Berkeley BART Zoning Standards (AB 2923)
 - Housing Element Update
 - Objective Design Standards (SB 35)
- Gaps and inconsistencies revealed by the BZO



Routine Process for Amending BZO

- Ongoing need for technical edits and error corrections
- Feedback from residents, users and Councilmembers
- Routine BZO updates
 - Text edits
 - Amendments
 - Substantive issues raised by stakeholders



Recommendation

Hold a public hearing and adopt the Baseline Zoning Ordinance and revised zoning maps, with an effective date of December 1, 2021



Questions

