

ORDINANCE NO. 6,972–N.S.

A PROCEDURAL AMENDMENT TO BERKELEY MUNICIPAL CODE CHAPTERS 23B.60, COMPLIANCE AND REVOCATION, AND 23B.64, ABATEMENT OF NUISANCES TO REDEFINE THE ZONING ADJUSTMENTS BOARD’S ROLE AS A REFERRING BODY AND MAKING THE CITY COUNCIL RESPONSIBLE FOR EXECUTING ENFORCEMENT ACTION

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

Section 1. That Berkeley Municipal Code Chapter 23B.60 is amended to read as follows:

Section 23B.60.010 Revocation and Modification of Permits

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

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

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

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

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

- A. Proceedings under this chapter to revoke or modify Permits may be initiated by a referral by the Zoning Officer, Board or Council. Such referral shall identify the Permit being considered, identify the property to which the permit applies, and set forth the reason or

reasons for the proposed revocation or modification. A referral by the Board shall fix a time and place for a public hearing on the proposed revocation. The Zoning Officer shall fix a time and place for a public hearing on all other referrals.

- B. Upon such referral, the Zoning Officer shall give notice of a public hearing before the Board as set forth in Section 23B.32.020 and shall also mail, within the prescribed time period, the notice of the hearing to the current holder of the Permit, the owner of the subject property, the person who requested an initiation of revocation proceedings, and any other person who has filed a written request with the Zoning Officer for such notice.
- C. The public hearing before the Board shall be conducted as set forth in Section 23B.32.030.

Section 23B.60.040 Recommendation

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

Section 23B.60.050 Council Proceedings – Notice of Decision

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

therefore with the Zoning Officer or the City Clerk, and shall file a copy of the Notice of Decision with the Zoning Officer.

Section 23B.60.060 Remedies

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

Section 23B.60.070 Recovery of Costs – Fees

- A. The City may recover the costs of any corrective action under this chapter that is effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.
- B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Council, takes any action authorized by Section 23B.60.060, in which case payment of costs charged under this paragraph shall be made a condition of continued operation of said building, structure or use.
- C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of costs under paragraph A above.

Section 2. That Berkeley Municipal Code Chapter 23B.64 is amended to read as follows:

Section 23B.64.010 Nuisances Prohibited

- A. No land, building or premises may be used, operated or maintained, and no building or structure may be set up, erected, constructed, altered, enlarged, converted, moved or maintained, in such a manner as to create or result in a public nuisance as defined in this chapter.

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

The notice shall specifically describe the violations and a proof of service shall also be recorded with the Notice and Order. Whenever the corrections ordered shall thereafter have been completed, the Zoning Officer shall file a new certified statement with the county recorder certifying that all required corrections have been made so that the property and/or structure is no longer in violation of this chapter. (Ord. 6578-NS § 1, 2000; Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.020 Nuisances Defined

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

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

Section 23B.64.030 Proceedings for Initiation of Abatement

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

Section 23B.64.040 Recommendation

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

Section 23B.64.050 Council Proceedings – Notice of Decision

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

23B.64.060 Remedies

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

Section 23B.64.070 Recovery of Costs -- Fees

- A. The City may recover the costs of any nuisance abatement effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.
- B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Board, or, on appeal, the Council, takes any action authorized by Section 23B.64.060, in which case payment of costs charged under this paragraph shall be made a condition of continued operation of said building, structure or use.
- C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of abatement costs under paragraph A above. (Ord. 6478-NS § 4 (part), 1999)

Section 3. The amendments in this Ordinance are categorically exempt under California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) and it can be seen with certainty that the proposed amendments would not have a significant effect on the environment.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 27, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: Councilmember Olds.