



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, January 17, 2018  
7:00 PM

North Berkeley Senior Center  
1901 Hearst Ave / MLK Jr. Way

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

### PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, Vice Chair, appointed by Councilmember Maio, District 1  
Martinot, Steve, appointed by Councilmember Davila, District 2  
Schildt, Christine, appointed by Councilmember Bartlett, District 3  
Poschman, Gene, Chair, appointed by Councilmember Harrison, District 4  
Beach, Benjamin, appointed by, Councilmember Hahn, District 5  
Kapla, Robb William, for Councilmember Wengraf, District 6  
Fong, Benjamin, appointed by Councilmember Worthington, District 7  
Vincent, Jeff, appointed by Councilmember Droste, District 8  
Wrenn, Rob, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **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):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: February 7, 2017.**
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** [Approval of Draft Minutes from the meeting on December 20, 2017.](#)
8. **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.

- 9. Action:** **Public Hearing: 1050 Parker Street Rezone and General Plan Amendment**
- Recommendation:** This item is postponed due to an error in the Public Hearing Notice.
- Written Materials:** Attached.
- Web Information:** N/A.
- Continued From:**
- 10. Action:** **[Public Hearing: Amendments BMC Chapter 23D.10 to Accessory Dwelling Units](#)**
- Recommendation:** Hold a Public Hearing to consider changes to the Accessory Dwelling Units Chapter.
- Written Materials:** Attached.
- Web Information:** N/A.
- Continued From:** 11/15/2017

**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:**

- [2018-01-17 Staff – Comprehensive Cannabis Ordinance packet](#)
- [2017-01-17 Debbie Sanderson \(ADU Task Force\) – Proposed ADU Zoning Amendments](#)

**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 three minutes each. 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 (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (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 meeting date 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, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

**Note: If you object to a project or to any City action** or procedure relating to the 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 (3) 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   **December 20, 2017**

3       The meeting was called to order at 7:05 p.m.

4       **Location:** North Berkeley Senior Center, Berkeley, CA

5       **Commissioners Present:** Steve Martinot, Benjamin Beach, Robb William Kapla, Benjamin  
6       Fong, Gene Poschman, Christine Schildt, Jeff Vincent, Rob Wrenn, Prakash Pinto.

7       **Commissioners Absent:** None.

8       **Staff Present:** Alex Amoroso and Sydney Stephenson.

9       **ORDER OF AGENDA:** No change.

10      **CONSENT CALENDAR:** None.

11      **PUBLIC COMMENT PERIOD:** 3 speakers.

12      **PLANNING STAFF REPORT:** None.

13      **COMMUNICATIONS IN PACKET:**

- 14           • 2017-12-20 Commissioner Martinot – The Class Nature of the “Density Bonus”

15  
16      **LATE COMMUNICATIONS** (Received after the Packet deadline): None.

17      **LATE COMMUNICATIONS** (Received and distributed at the meeting): None.

18      **CHAIR REPORT:** No Chair Report was provided.

19      **COMMITTEE REPORT:** See Item 9.

20      **7. APPROVAL OF MINUTES:**

21           Motion/Second/Carried (GP/PP) to approve the Planning Commission Meeting Minutes from  
22           November 15, 2017 with amendments to the motion passed on R-1A Development Standards.  
23           Ayes: Poschman, Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn, Pinto. Noes: None.  
24           Abstain: None. Absent: None. 9-0-0-0)

25  
26      **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

27      **AGENDA ITEMS**

28 **9. Discussion: Report by PC Affordable Housing and Community Benefits**  
29 **Subcommittee**

30 Commissioner Schildt presented a report about the December 6 Subcommittee meeting. The  
31 Subcommittee reviewed the City Council referrals related to affordable housing and  
32 community benefits. The Commissioners discussed the purpose and workplan for the  
33 Subcommittee. In addition, Staff presented a three-step workplan proposal for creating a  
34 local Density Bonus ordinance: 1) create a basic Local Density Bonus Ordinance; 2) focus  
35 on referral related to Density Bonus, including the 15% in-lieu fee on Telegraph; and 3)  
36 develop density standards. The Subcommittee also decided their second priority would be  
37 the referrals related to streamlining affordable housing.

38 Public Comment: 1 speaker.

39 **10. Discussion: Planning Commission Work Plan Discussion**

40 Staff presented the Planning Commission’s work plan document, which is working document  
41 that is continuously updated. The Commission also discussed adding a Student Housing  
42 item to the February 7, 2018 meeting, but no conclusion was reached.

43 Public Comment: No speakers.

44 **11. Action: Approve 2018 Planning Commission 2018 Calendar**

45 Motion/Second/Carried (GP/CS) to approve the Planning Commission 2018 Calendar. Ayes:  
46 Poschman, Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn, Pinto. Noes: None.  
47 Abstain: None. Absent: None. 9-0-0-0)

48 Public Comment: No speakers.

49 **12. Action: Recommend three Planning Commission members for the**  
50 **Council Housing Action Plan joint subcommittee**

51 The Commission voted to recommend Commissioners Schildt, Wrenn, and Beach for the  
52 Council Joint Subcommittee, with Commissioner Vincent as an alternate. The Commission  
53 expressed concern about diverting staff time to the joint subcommittee.

54 Motion/Second/Carried (RK/PP) to recommend Planning Commissioners Schildt, Wrenn and  
55 Beach, with Vincent as an alternate for the Council Joint Subcommittee. Ayes: Poschman,  
56 Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn, Pinto. Noes: None. Abstain: None.  
57 Absent: None. 9-0-0-0)

58 Public Comment: No speakers.

59 **The meeting was adjourned at 8:06 pm**

60 **Commissioners in attendance: 9 of 9**

- 61 **Members in the public in attendance: 4**
- 62 **Public Speakers: 4**
- 63 **Length of the meeting: 1 hour and 1minute**



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

## **STAFF REPORT**

**DATE:** January 17, 2018  
**TO:** Members of the Planning Commission  
**FROM:** Alene Pearson, Associate Planner  
**SUBJECT:** Public Hearing on Zoning Ordinance Amendments: Accessory Dwelling Units (ADUs)

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### **SUMMARY**

The Planning Commission considered modifications to Berkeley Municipal Code Chapter 23D.10 (Berkeley's ADU Ordinance) on October 4, 2017 and November 15, 2017. On November 15, 2017, the Commission requested that a Public Hearing be set on January 17, 2018 to decide final direction on proposed amendments.

The list of amendments under consideration can be found in the December 29, 2017 Public Hearing Notice (Attachment 1). This report provides background, analysis and recommendations on those proposed amendments. The Discussion section presents a list of items for Planning Commission consideration and action. Direction given by the Planning Commission will provide information needed to finalize draft ADU Ordinance amendments that will be forwarded to the City Council.

### **BACKGROUND**

An ADU is a secondary Dwelling Unit on a lot that has one single-family dwelling (herein referred to as a Primary Dwelling Unit). ADU development is one mechanism of a multi-pronged strategy that can help alleviate the current housing shortage. ADUs provide low-impact infill development that preserves neighborhood character and can potentially be more affordable to rent.

State ADU laws (Government Code section 65852.2) were amended in January 2017, requiring municipalities to streamline the permitting process for ADUs that adhere to broad minimum and maximum standards for statewide development of ADUs, and local development standards (such as setbacks, maximum height, and gross floor area) that are consistent with those regulations and 1) appropriate to local conditions and 2) do not impede ADU development.

The intent of streamlining is to allow ADUs to be built with a limited planning permit process, as long as proposed ADUs meet local “by right” development standards. In Berkeley, “by right” approval means projects that are fully compliant with State and local standards, and can be developed with a Zoning Certificate (ZC) and a Building Permit. Because these are ministerial permits, they do not require notice to neighbors or public input and are not appealable.

Berkeley adopted revised regulations in March of 2017 to reflect these new requirements. Now that the regulations have been in place for several months, the newly-proposed amendments to the ADU Ordinance are intended to further clarify and refine the development standards.

## **DISCUSSION**

The Planning Commission considered amendments to the ADU Ordinance on October 4, 2017 and November 15, 2017 (see Attachments 2 and 3 for past staff reports). At the November 15, 2017 meeting, the Commission agreed on items to include in a Public Hearing. Items are divided into the two categories listed below:

### **1. Amendments with General Agreement from Planning Commission**

The Planning Commission agreed to include these amendments in the draft ADU Ordinance as written.

### **2. Amendments Requiring Planning Commission Action**

The Planning Commission agreed to include these amendments in the draft ADU Ordinance, but needs to agree on final parameters and language.

In order to be consistent, the bullet lists presented in the two categories closely mirror text in the Public Hearing Notice. Line numbers from the redlined version of the ADU Ordinance (Attachment 4: Redlined Draft ADU Ordinance) are provided to help readers find relevant sections of text. A clean copy of the Draft ADU Ordinance is provided as Attachment 5.

### **1. Amendments with General Agreement from Planning Commission**

#### **• Update the structure and wording of the ADU Ordinance.**

Reorganize ADU rules so they are clear and easy to understand. Amendments primarily involve formatting changes, such as restructuring the outline and modifying sentence structure and word choice.

(See redlined ADU Ordinance: Attachment 4, lines 1-158)

#### **• Expand the allowable districts for ADUs to include all Commercial districts and Mixed-Use Residential (MU-R) where a single-family home is present.**

Update the “Permitted Uses” tables in all Commercial districts and Mixed-Use Residential (MU-R) to include ADUs.

(See redlined ADU Ordinance: Attachment 4, lines 14-16 and lines 189-198)

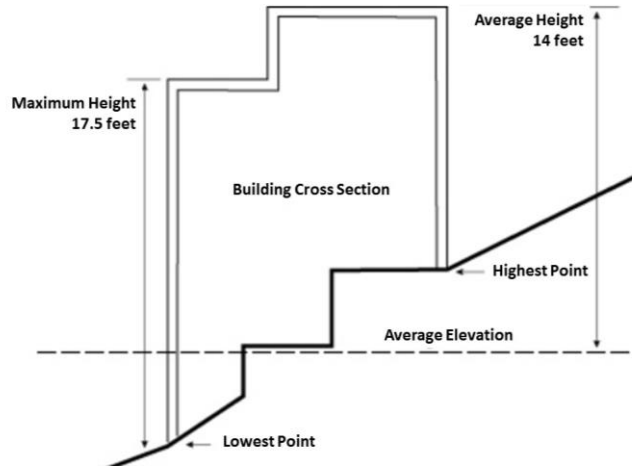


- **Move the ADU Ordinance from Chapter 23D (Residential Districts) to Chapter 23C (Applicable in All Districts).**  
Permitting ADUs in non-residential districts (see bullet above) requires:
  - Repealing Section 23D.10 (Accessory Dwelling Units)
  - Creating Section 23C.24 (Accessory Dwelling Units)
  - Updating code references throughout the chapter and in applicable “Permitted Uses” tables(See redlined ADU Ordinance: Attachment 4, lines 1-199)
  
- **Update the existing ADU definition and create a definition for Primary Dwelling Unit.**  
Update to clarify and provide consistency.  
(See redlined ADU Ordinance: Attachment 4, 160-173)
  
- **Modify ADU Development Standard: Remove Restriction on Entrance**  
Allow ADU entrance on front of Primary Dwelling Unit.  
(See redlined ADU Ordinance: Attachment 4, lines 115-118)

Unless the Planning Commission takes action to direct staff otherwise, proposed amendments in Category 1 (Amendments with General Agreement from Planning Commission)” will be presented to City Council (as shown in Attachment 4) as draft ADU Ordinance amendments.

## **2. Amendments Requiring Planning Commission Action**

- **Set Maximum Height at 14 feet**  
Current Ordinance: Maximum Height is 10 feet for flat roofs and for eaves at the setback and 14 feet for peaked roofs.  
Staff Recommendation: Set Maximum Height to 14 feet regardless of roof design to simplify implementation.  
Analysis: Maximum Height of 14 feet provides design flexibility and maintains roughly 1-story “by right” ADUs.  
(See redlined ADU Ordinance: Attachment 4, lines 97-101)
  
- **Allow Average Height Calculation in Hillside Overlay**  
Current Ordinance: Maximum Height is used in the Hillside Overlay District.  
Staff Recommendation: Allow Average Height calculations in the Hillside Overlay with an Administrative Use Permit (AUP).  
Analysis: Lots with steep slopes are challenging to develop. Average Height provides relief by allowing ADUs to exceed Maximum Height downslope, but requires ADUs to stay below Maximum Height upslope. See schematic below.



Analysis (continued): An AUP would be required to provide notice to neighbors because view obstruction could be an issue.  
(See Attachment 4, lines 102-103)

- **Use District Standards for Height of Residential Additions when ADUs are created by Addition to a Primary Dwelling Unit**

Current Ordinance: This language isn't currently in the ADU Ordinance; however this is the current practice among Land Use Planning staff.

Staff Recommendation: Explicitly state that development standards for the height of Residential Additions will be used when ADUs are created by additions to a Primary Dwelling Unit.

Analysis: Adding language to development standards will clarify requirements for applicants and staff.

(See Attachment 4, lines 104-106)

- **Increase Maximum Size as Gross Floor Area (GFA)**

Current Ordinance: Set maximum size (GFA) to 750 square feet

Staff Recommendation: No change

Analysis: ADUs are small scale, in-fill development. Maximum size (GFA) of 750 square feet preserves the accessory nature of an ADU. State Law caps ADU size at 1200 square feet.

(See Attachment 4, lines 90-93)

- **Increase Maximum Size as Percentage of Primary Dwelling Unit (GFA)**

Current Ordinance: Set maximum size to 75% of Primary Dwelling Unit (GFA)

Staff Recommendation: No change

Analysis: ADUs are small scale, in-fill development. Setting the maximum size of an ADU to 75% of the Primary Dwelling Unit GFA preserves the accessory nature of an ADU. State Law caps ADU maximum size at 50% of Primary Dwelling Unit (GFA).

(See Attachment 4, lines 90-93)

- **Modify Levels of Discretion for Changes to Development Standards**  
Current Ordinance: Allow changes to all development standards with an AUP.  
Staff Recommendation: Allow changes to development standards for open space, coverage and setbacks with an AUP.  
Analysis: Lot configurations can limit the development potential for ADUs. Flexibility with setbacks, open space and lot coverage address limitations on ADU placement. However, Gross Floor Area and Maximum Height do not affect the basic feasibility of ADU development and should not be flexible with an AUP.  
(See Attachment 4, lines 131-135)
  
- **Modify Findings for Changes to Development Standards**  
Current Ordinance: There are three findings: detriment, parking and fire safety.  
Staff Recommendation: Remove the parking finding and update language in other two findings to be consistent with proposed amendments.  
(See Attachment 4, lines 136-157)
  
- **Consider Special Provisions to Demolition and Replacement of Accessory Buildings**  
Current Ordinance: There are no special provisions regarding demolition and replacement of an Accessory Building to facilitate the development of ADUs.  
Staff Recommendation: Bring this issue back to the Commission after further research to understand needs and identify potential options.

The Planning Commission should take action on the seven bulleted topics presented in Category 2 (Amendments Requiring Action). Staff has made recommendations that can be accepted or modified. Planning Commission's actions will be incorporated into draft ADU Ordinance amendments that will be presented to City Council.

## **CONCLUSION AND NEXT STEPS**

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, provide final direction on the bulleted items in Category 2, and agree to forward the attached draft ADU Ordinance amendments to City Council, with any changes identified through a vote of the Planning Commission.

## **Attachments**

1. Public Hearing Notice
2. ADU Staff Report from October 4, 2017 Planning Commission meeting
3. ADU Staff Report from November 15, 2017 Planning Commission meeting
4. Redline version of Draft ADU Ordinance
5. Clean Copy of Draft ADU Ordinance



# PLANNING COMMISSION

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## NOTICE OF PUBLIC HEARING

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JANUARY 17, 2018

### **Amendments to the Accessory Dwelling Unit (ADU) Ordinance: Expand Districts where ADUs are Permitted, Modify ADU Development Standards and Levels of Discretion, and Clarify ADU Ordinance Language.**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, January 17, 2018**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

**PROJECT DESCRIPTION:** The proposed amendments to the City's Zoning Ordinance (Title 23) respond to direction previously provided by the Planning Commission, and would expand where ADUs are allowed, modify development standards, levels of discretion and associated findings. Amendments will also simplify the structure and language of the ADU Ordinance and update definitions related to ADUs.

Full text of ADU Ordinance Amendments can be found on the Planning Commission's homepage ([https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)). Changes to be considered are summarized as follows (the Planning Commission may further amend the language of the proposed ordinance):

- Update the structure and wording of the ADU Ordinance.
- Move the ADU Ordinance from Chapter 23D (Residential Districts) to Chapter 23C (Applicable in All Districts). This requires:
  - Repealing Section 23D.10 (Accessory Dwelling Units).
  - Creating Section 23C.24 (Accessory Dwelling Units).
  - Updating code references in applicable "Permitted Uses" tables.
- Expand the allowable districts for ADUs to include all Commercial districts and Mixed-Use Residential (MU-R). This requires:
  - Updating the "Permitted Uses" tables in all Commercial districts and Mixed-Use Residential (MU-R) to include ADUs.
- Modify ADU Development Standards for height, unit size, and front door location.
- Modify ADU levels of discretion and associated findings for changes to Development Standards.
- Update the existing ADU definition and create a definition for Primary Dwelling Unit.

Additional considerations may include increased building height, larger unit size, and demolition and replacement of accessory buildings as ADUs.

**LOCATION:** Affected districts include: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-1, C-E, C-N, C-NS, C-SA, C-SO, C-T, C-W, C-DMU and MU-R. The zoning map is available online: [http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level\\_3\\_-\\_General/Zoning%20Map%2036x36%2020050120.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf)

**ENVIRONMENTAL REVIEW STATUS:** The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

### **PUBLIC COMMENT**

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments concerning this project should be directed to:

Planning Commission  
**Alex Amoroso, Secretary**  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

Fax: (510) 981-7520  
E-mail: [aamoroso@ci.berkeley.ca.us](mailto:aamoroso@ci.berkeley.ca.us)

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

### **COMMUNICATION ACCESS**

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

### **FURTHER INFORMATION**

Questions should be directed to **Alex Amoroso**, at (510) 981-7520, or [aamoroso@ci.berkeley.ca.us](mailto:aamoroso@ci.berkeley.ca.us). Past and future agendas are also available on the Internet at: [www.ci.berkeley.ca.us](http://www.ci.berkeley.ca.us).



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

## **STAFF REPORT**

DATE: October 4, 2017  
TO: Members of the Planning Commission  
FROM: Alene Pearson, Associate Planner  
SUBJECT: Zoning Ordinance Amendments for Accessory Dwelling Units (ADUs)

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### **BACKGROUND**

On September 27, 2016, California legislature declared that allowing Accessory Dwelling Units (ADUs) in single family and multifamily zones would help to alleviate the State's housing crisis. In response, the State passed two laws mandating a streamlined approval process for ADUs. These laws came into effect on January 1, 2017, nullifying all local ADU ordinances that were out of compliance with the newly updated California Government Code Section 65852.2 (State ADU Law).

Chapter 23D.10 of Berkeley Municipal Code (Berkeley's ADU Ordinance) was adopted by City Council in November 2015. After adoption of the new State ADU Law in September 2016, staff and Planning Commission worked quickly -- with help from California Department of Housing and Community Development (HCD), neighboring jurisdictions and community members -- to identify sections of Berkeley's ADU Ordinance that required modification. This process resulted in code change requests that fell outside the scope of compliance modifications.

In order to expedite adoption of a State-compliant ADU Ordinance, Planning Commission decided to focus on compliance-related amendments only and agreed to revisit the ADU Ordinance later in the year. This approach enabled the City Council to act quickly, adopting amendments that brought Berkeley's ADU Ordinance into compliance with State Law on March 28, 2017. At tonight's meeting, Planning Commission is asked to consider a set of ADU Ordinance amendments that address issues set aside during the March 2017 compliance modification effort. Staff outlines an approach to this work in the next section.

### **APPROACH**

This staff report presents amendments to the Berkeley ADU Ordinance that originate from applicant feedback, comments from the public and questions that City Council

members have been asked by their constituents. Staff has also been working with planners at the Zoning Counter to identify aspects of the ADU Ordinance which create confusion or could be modified to streamline the application process. The end goal of this effort is to have an ADU Ordinance that is easy to read, easy to understand and easy to administer.

In the Discussion section, amendments are presented in three separate categories:

- **Simple Clarifications:** These edits clarify language and/or simplify structure in order to make the ADU Ordinance easier to read and administer.
- **Minor Policy Changes:** These edits clarify policy intended in the initial drafting of the ADU Ordinance. Policies are unclear due to word choice, sentence structure and/or unintentional gaps in the code.
- **New Policy Considerations:** These edits introduce new policy consideration that reflect feedback received from applicants, members of the public and constituents who reached out to their City Council members.

Planning Commission is asked to provide feedback on clarifications and to confirm that policy considerations, as outlined in the proposed amendments, reflect the intentions of City Council.

## DISCUSSION

The following attachments will help guide tonight's discussion on ADUs:

- Attachment 1 (*Rationale for Proposed Amendments to ADU Ordinance*) provides a table of proposed modifications to the ADU Ordinance.
- Attachment 2 (*BMC Chapter 23D.10 and excerpt from 23F*) provides the existing ADU Ordinance with line numbers for reference.
- Attachment 3 (*Proposed Modifications to ADU Ordinance and ADU Definition*) provides a revised version of the ADU Ordinance that addresses all the issues outlined in Attachment 1. This document has line numbers for reference.
- Attachment 4 (*Proposed Redlined Modifications to ADU Ordinance and ADU Definition*) is the same as Attachment 3 with redlining to show location of additions and deletions.

### Simple Clarifications

The following clarifications are included in the proposed amendments. These changes in language and/or structure make the ADU Ordinance easier to read, understand and administer.

- Move ADU Ordinance from "Residential Districts" to "Applicable in All Districts."
- Move ADU "creation type" from "Development Standards" to "Special Provisions."
- Change subtitle from "Permit Requirement" to "Permit Procedure."
- Break "ADU Standards" into "Special Provisions" and "Development Standards."

- Explicitly state that ADUs created by “conversion” are allowed by-right.
- Allow ADU and Primary Dwelling Unit to be developed simultaneously by removing requirement for an “existing” Primary Dwelling Unit on a lot.
- Explicitly state that only one ADU is allowed per lot.
- Simplify structure and language of “Parking Requirements.”
- Use consistent terms and wording throughout the Chapter.
- Remove obsolete ordinance reference.

*Discussion Question One: Does the Planning Commission think these edits clarify language and/or simplify structure, making the ADU Ordinance easier to read and understand?*

### **Minor Policy Changes**

The following edits clarify policy that was intended in the initial drafting of the ADU Ordinance, but is unclear due to word choice and sentence structure. Edits also remove unintentional barriers, add missing guidance and close gaps that have surfaced during application of the ADU Ordinance.

- Remove restriction of ADU entrance on front of Primary Dwelling Unit  
When ADUs are created from garage-conversions and other carve-out configurations, the restriction of an ADU front door on the Primary Dwelling Unit has been identified as a barrier to development.
- Remove Three-year Exception to Owner-occupation  
ADUs allow low-impact, infill development opportunities for owner-occupied properties where development potential is otherwise restricted. Language allowing for exceptions to owner-occupation during sabbaticals and long-term vacations creates an assumption that ADUs are permitted on properties with permanent owner-absence. Existing language introduces ambiguity, creates confusion for applicants and community members, and is onerous to enforce.
- Clarify Maximum Height for ADUs  
Clarify that ADUs created by additions to Primary Dwelling Units are subject to Residential Addition Development Standards. Provide flexibility by allowing ADUs in the Hillside Overlay to use Average Height calculations with an Administration Use Permit (AUP).
- Add Building Separation to Development Standards  
The ADU Ordinance does not include a specified Building Separation. Add Building Separation standards of eight feet to allow for a four foot setback for each building and ample room for safe access.
- Remove Replacement Parking in Front Yard Setback  
In order to maintain neighborhood character, allow for flexible replacement parking in side setbacks, but not in the front yard setback.



*Discussion Question Two: Does the Planning Commission think these edits clarify policy that was initially intended when City Council adopted the ADU Ordinance?*

### **New Policy Considerations**

These edits reflect feedback received from applicants, members of the public and constituents who reached out to their City Council members and introduce new policy consideration. These policy considerations were not included in the initial drafting of the ADU Ordinance. The Planning Commission is asked to consider whether these changes reflect City Council's intention of moving forward with ADUs.

- Expand Districts where ADUs are Allowed

ADUs are currently allowed in Berkeley's Residential Districts where lots are occupied by one Single Family Dwelling. The Ordinance is intended to allow ADUs as low-impact, infill development opportunities on owner-occupied properties where development potential is otherwise restricted. Commercial and Mixed-Use Districts do allow for Residential Uses and do include lots that are occupied by one Single Family Dwelling.

*Discussion Question Three: Does the Planning Commission want to allow ADUs on lots with a Single Family Dwelling in all Districts except Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use Light-Industrial (MULI) and Unclassified (U) Districts?*

- Lot Bedroom Count

Lots in Berkeley are subject to discretionary approval if the number of bedrooms exceeds four, regardless of number of units. Staff recommends removing ADUs from the lot bedroom count and adding a limit of two bedrooms per ADU. This solution allows both flexibility and control – removing barriers to ADU construction and maintaining the “accessory” nature of an ADU.

*Discussion Question Four: Does the Planning Commission want to remove ADUs from the Lot Bedroom Count? Does the Planning Commission want to add a limit of two bedrooms per ADU?*

- Usable Open Space

Currently Usable Open Space requirements are specified by District. Based on Planning Commission discussions about value of Usable Open Space on lots with more than one unit, Staff recommends adding a set Development Standard of 400 square feet of Usable Open Space for both the ADU and the Primary Dwelling Unit regardless of District. For example, in order to add an ADU to a lot with an existing Single Family Dwelling in the C-SA, the applicant would be required to provide 800 square feet of Usable Open Space. This Development Standard can be modified if lot configuration is a limiting factor to ADU development.

*Discussion Question Five: Does the Planning Commission want to specify a consistent Development Standard for Usable Open Space for lots with ADUs?*

- Modification of Development Standards

Because ADUs are allowed by-right, appropriate Development Standards are needed to both preserve neighborhood character and provide flexibility in design and construction. By definition, ADUs are accessory to Primary Dwelling Units – smaller in size, height and overall presence on a lot. They are intended to provide homeowners with an option to develop low impact, infill development where development potential is otherwise limited. Staff recommends allowing Administrative Use Permits (AUPs) to modify setbacks, building separation, usable open space and lot coverage/FAR when an ADU can't be constructed due to lot configuration. AUPs will not be allowed for modifying size and height.

*Discussion Question Six: Does the Planning Commission agree that Development Standards for setbacks, building separation, usable open space and lot coverage/FAR should be allowed with AUPs.*

#### **NEXT STEPS**

Staff recommends that the Planning Commission review proposed amendments, addressing the six discussion questions presented above. Unless Planning Commission provides other guidance, staff will bring these amendments back to the Planning Commission on November 15, 2017 for a Public Hearing.

#### **ATTACHMENTS**

Attachment 1: Rationale for Proposed Amendments to ADU Ordinance

Attachment 2: Existing ADU Ordinance and ADU Definition

Attachment 3: Proposed Modifications to ADU Ordinance and ADU Definition

Attachment 4: Proposed Redlined Modifications to ADU Ordinance and ADU Definition



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: November 15, 2017  
TO: Members of the Planning Commission  
FROM: Alene Pearson, Associate Planner  
SUBJECT: Zoning Ordinance Amendments for Accessory Dwelling Units (ADUs)

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### SUMMARY

At the October 4, 2017 meeting, the Planning Commission discussed a set of amendments to Chapter 23D.10 of Berkeley Municipal Code (Berkeley's ADU Ordinance). This staff report summarizes input received at that meeting and revisits a set of outstanding questions. Staff also provides recommendations to assist the Commission toward setting a Public Hearing on draft Zoning Ordinance language.

The City Council adopted a set of amendments to Berkeley's ADU Ordinance in March of 2017 that brought Berkeley's ADU Ordinance into compliance with California Government Code Section 65852.2 (State ADU Law). See Attachment 1 (*March 14, 2017 City Council Report on ADU Ordinance Amendments*) for more information. That ordinance update contains some drafting flaws and requires clarification. On October 4, 2017, staff introduced a second set of amendments to address these issues. A limited set of "policy issues" identified during implementation of the ADU Ordinance was also considered (*Attachment 2: October 4, 2017 Staff Report on ADU Ordinance Amendments*). Planning Commission discussed these amendments and asked staff to return with a report that reflected feedback on proposed amendments and discussed outstanding questions.

### BACKGROUND

An ADU is a secondary Dwelling Unit on a lot that has one single-family dwelling (herein referred to as a main Dwelling Unit). State ADU Law is intended to provide an opportunity to add "low impact" housing units that are "accessory to" or of smaller size than the main Dwelling Unit on a lot. State law allows for ADUs to be created by conversion of existing buildings or new construction.

ADU development is one mechanism of a multi-pronged solution that can help alleviate the current housing shortage. ADUs provide a diversity of housing and more affordable

rents. ADUs allow low-impact, infill development that preserve neighborhood character. They result in small backyard cottages and granny flats that are well suited for individuals or smaller households. ADUs are not intended to provide viable family housing as they are intended to be accessory to the main Dwelling Unit.

State ADU Laws streamline the permitting process for certain ADUs. Streamlining is targeted at ADUs created from existing legal structures and those created from new construction that adhere to local development standards (such as setbacks, Maximum Height, and Gross Floor Area). The intent of streamlining is to allow ADUs to be built with a limited planning permit process, as long as proposed ADUs meet “by right” standards of the local ordinance. State ADU Law allows cities to set development standards that are 1) appropriate to local conditions and 2) do not impeded ADU development. Berkeley’s proposed amendments to the ADU Ordinance were prepared in the context of these two criteria.

In Berkeley, “by right” approval means projects can be developed with a Zoning Certificate (ZC). “By right” ADUs that are granted a ZC do not require notice to neighbors or public input.

The City of Berkeley’s ADU Ordinance contains a set of “by right” development standards that are relatively liberal in comparison to State ADU Law. For example:

- No off-street parking is required for ADUs. State law requires off-street parking if ADUs are further than half a mile from public transit.
- ADUs in Berkeley are required to have 4- foot rear and side setbacks. State law requires 5-foot rear and side setbacks.
- ADUs in Berkeley can have an area that is 75% of the Gross Floor Area of the main Dwelling Unit on the lot. State law limits ADU size to 50% of the Unit Gross Floor Area of the main Dwelling Unit.

See Attachment 3 (*Table Comparing ADU Development Standards*) for a comparison of development standards in jurisdictions adjacent to Berkeley as well as jurisdictions similar to Berkeley.

Berkeley currently allows applicants to modify development standards through the Administrative Use Permit (AUP) process. For example, an applicant can request consideration of an increase to Maximum Height or setback limits. An AUP requires neighbor noticing and provides an opportunity for public input on the proposed project. The AUP process is valuable in instances where modified standards for ADUs may impact adjacent neighbors due to size and/or proximity.

Thus, the ZC and AUP options offer applicants separate opportunities to develop ADUs on their property. The streamlined ZC approach allows development through a set of defined standards that generally avoid conflicts with adjacent neighbors. The AUP path allows for flexibility beyond the defined standards so that applicants can consider other options. Community protections are built into the two options in different ways; set standards versus flexibility with community notification and input.

Separately, the Commission is considering changes to the R1-A District in a parallel discussion. This discussion has implications to ADUs as well, in that the R1-A allows two main Dwelling Units, as opposed to an “Accessory” Dwelling Unit. The Commission should consider the intent to differentiate these two Dwelling Unit types based on the differing ordinances.

## DISCUSSION

This section summarizes Commission input on proposed ADU regulations. In several cases, staff heard specific direction; in others, further consideration and direction is necessary. Proposed amendments are presented in four separate categories for clarity:

- Categories 1 and 2 result from Planning Commission’s discussion and direction on October 4, 2017. Several amendments are to be included (listed below in group 1), while others are to be dropped from further consideration (group 2).
- Category 3 identifies issues to be resolved through Commission direction at this meeting.
- Category 4 includes issues of interest to the Commission that require further staff and Commission research and consideration.

Planning Commission is asked to review and confirm direction in order for staff to finalize amendment language and set the matter for a Public Hearing.

### 1. Amendments Considered and Added/Modified

The following proposed Zoning Ordinance amendments will be incorporated into the Draft ADU Ordinance:

- **Clarifications in language and/or ordinance structure.** This set of amendments ensure that ADU rules are clearly understood. Amendments primarily involve formatting changes, such as restructuring the outline and modifications to sentence structure and word choice. See Attachment 4 for a summary of Category 1 amendments (*Table of Category 1 Amendments*). The Commission supported these modifications.
- **Location of ADU entrance.** The current ADU Ordinance does not allow an ADU entrance on the front of the main Dwelling Unit. Limiting the placement of an ADU entrance provides minimal control over ADU design and creates an impediment to ADU development. The Commission supported removing this restriction and allowing it by right.
- **Allowable districts.** Expand the districts where ADUs are allowed, including all Residential districts (except ES-R) and all Commercial districts. ADUs would still only be allowed on lots that have one main Dwelling Unit. The Commission agreed to this proposal.

### 2. Amendments Considered and Left Out

The following proposed Zoning Ordinance amendments will not be incorporated into the Draft ADU Ordinance.

- **2-bedroom limit.** Staff proposed adding a 2-bedroom limit to ADUs, with the intent of keeping the ADU “accessory” to the main Dwelling Unit. Following Commission conversation of potential development changes in the R1-A, this amendment was intended to clarify the relationship between a main Dwelling Unit and an Accessory Dwelling Unit on a lot. The Commission recommended against including this development standard in the ADU Ordinance.
- **Building separation.** Staff proposed adding an 8-foot building separation between the main Dwelling Unit and ADU. This was intended to allow for safe passage and to create space between detached ADUs and the main Dwelling Unit. The Commission recommended against including this development standard in the ADU Ordinance.
- **Parking in front yard setback.** Staff proposed not allowing replacement parking in the front yard setback. This amendment is withdrawn due to conflicts with State Law and will not be incorporated into the ADU Ordinance. State Law requires flexible replacement parking when ADU creation removes parking for the main Dwelling Unit.

### 3. Amendments with Outstanding Questions

Discussion of the proposed amendments resulted in four issues that remain unresolved. In the following section, staff introduces each of these amendments, explains why they were proposed, and provides a recommendation for moving forward.

- **Proposal: Removing 3-Year Exception to Occupancy Requirement**

This proposed modification results from the requirement for owners to reside on site if they have an ADU. The current ADU Ordinance intends this relationship, but allows flexibility for owners to reside elsewhere for a limited (3-year) period.

During the recent upswing in housing costs, speculative purchasers express interest in buying homes and building ADUs with the intent of renting both. Staff believes that this is antithetical to the intent of the State ADU Law and Berkeley’s ADU Ordinance.

Current ordinance requires owner occupation of either the ADU or the main Dwelling Unit and provides a three-year exception to occupancy requirement.

Proposal reasoning: Staff proposed removing the 3-year exception because of confusion caused to homeowners and lack of City capacity to enforce the timeframe.

Recommendation: Due to Commission’s concern about removing flexibility, staff recommends dropping this amendment from consideration. The rules would remain as currently written.

- **Proposal: Increase Maximum Height and Clarify Calculations**

Current ordinance allows a Maximum Height of 10 feet for flat roofs and 14 feet for peaked roofs.

Proposal specifics and reasoning:

- *Increase Maximum Height to 14 feet, regardless of roof design.*  
Increasing Maximum Height to 14 feet provides flexibility in design, while limiting “by right” ADUs to 1-story. For comparison, a 1-story second dwelling unit in the R-1A is proposed to have a Maximum Height of 14 feet, must be approved with a Use Permit, and must provide off-street parking.
- *Allow Average Height calculation for lots in the Hillside Overlay with an Administrative Use Permit (AUP).*  
Allowing Average Height calculations in the Hillside Overlay will account for the challenge of developing an ADU on a steep lot. Staff introduced an AUP into the Average Height option to provide an opportunity for neighbor input where view obstruction could potentially be an issue.
- *Add language stating that district standards (for Residential Additions) will be used when ADUs are created by an Addition to a main Dwelling Unit.*  
Although this language isn’t currently in the ADU Ordinance, this is the current practice among Land Use Planning staff. Explicitly adding this language to the Maximum Height development standard will clarify standards for applicants and staff.

Recommendation: Staff recommends Planning Commission support the proposed amendments to increase and clarify Maximum Height.

- **Proposal: Increasing Gross Floor Area**

Current ordinance allows an ADU with a Gross Floor Area (size in square footage) that is no greater than 750 square feet or 75% of the Gross Floor Area of the main Dwelling Unit -- whichever is less.

Proposal reasoning:

No specific proposal has been made, though some Commissioners suggested that a larger ADU size limit may be desirable. In addition, some concerns were raised about the 75% relationship limiting ADU sizes where smaller main Dwelling Units exist. The Planning Commission asked that increases to Gross Floor Area -- both ADU size (square footage) and percentage of main Dwelling Unit -- be included in this discussion.

Background:

Berkeley's development standards allow for low-impact, infill development (e.g. backyard cottages, in-law units) that is "accessory" to a main Dwelling Unit.

State ADU Law's allows for a larger square foot maximum than Berkeley allows (1200 square feet versus 750 square feet). However, State ADU Law limits ADUs to 50% of the size of the main Dwelling Unit, whereas Berkeley allows a 75% relationship. See Attachment 3 (*Table Comparing ADU Development Standards*) for a comparison to other jurisdictions.

This proposal focuses on the proportional relationship of the "accessory" Dwelling Unit to the main Dwelling Unit. The R1-A allows for two main Dwelling Units, inferring two full size houses. The ADU ordinance specifies a proportional ("secondary unit") relationship of the ADU to the main Dwelling Unit.

Recommendation: Staff recommends Planning Commission not change existing Gross Floor Area development standards. Retaining these standards allow for the proportional relationship to be appropriately retained.

- **Proposal: Not Allowing AUPs to Modify Maximum Height and Gross Floor Area**

Current ordinance allows modification of all ADU development standards with AUPs. This includes Maximum Height, Gross Floor Area, setbacks (rear and side) Lot Coverage, Open Space.

Proposal:

Staff proposes removing AUP allowances to modify Maximum Height and Gross Floor Area.

Reasoning: Lot configurations often limit the development area for an ADU. Flexibility with setbacks, Open Space and Lot Coverage address limitations on ADU placement. Maximum Height and Gross Floor Area set outside boundaries for the ADU design.

The goal of the ADU ordinance is to make development feasible. Exceeding Gross Floor Area and Maximum Height are not matters of feasibility, but design choice.

Recommendation: Staff recommends Planning Commission support the proposed amendments to modify development standards to not allow for Gross Floor Area and Maximum Height relief through the AUP process.

4. Concepts Requiring Additional Research and Analysis

Some members of the Planning Commission identified additional areas of interest related to ADUs. These are not yet detailed proposals for modification to the ADU ordinance.



- *Requiring Affordability for some or all ADUs.*  
Currently there is no mechanism in the Zoning Ordinance or City program that staff can leverage to link affordability requirements to ADUs. Staff is not prepared to address this issue in this round of ADU Ordinance amendments. The issue should be addressed in a more comprehensive fashion and through direction from Council.
- *Allowing ADUs on lots with more than one unit.*  
ADUs are allowed on lots with one main Dwelling Unit across a wide number of districts. Properties in multi-unit districts (i.e. R-1A, R-2, R-2A, R-3) allow for ADUs on a lot if only a single family residence is present. This supports the intent of State ADU Law and Berkeley's ADU Ordinance -- that the ADU is "accessory" to the main Dwelling Unit. If desired, other avenues exist to add one or more additional main Dwelling Units in these districts. Should the Commission wish to pursue allowing ADUs on lots with multiple Dwelling Units, a more intensive look at density standards is necessary. The Council has identified density standards as a separate work referral, which will be brought to the Commission for future consideration.
- *Demolition of existing structures as it pertains to ADUs.*  
State ADU law requires that applicants be allowed to convert existing garages and accessory structures into ADUs without meeting other required zoning standards for new residential construction. City of Berkeley has many non-conforming garages that do not meet setbacks and other standards. Often the structures cannot be preserved and rebuilt to meet essential building and safety standards.

Applicants have requested that they be allowed to demolish an existing non-conforming structure, then rebuild a new structure over the prior footprint "by right". Staff does not believe this is keeping with the intent or letter of the State ADU Law uses the term conversion: "...existing garage that is converted to an accessory dwelling unit...". In terms of demolitions, City regulations require that demolished buildings be rebuilt to meet zoning district standards (includes setbacks, conversion of use, Maximum Height and others). These regulations are set so that adjacent neighbors know what might be built in close proximity to their property side or rear yard, typically locations for ADUs. Should an applicant wish to construct an ADU within required setbacks, the AUP process is available. Staff does not believe that demolition and rebuild without an AUP should be allowed. Further research and focused Commission discussion is essential before moving forward on this subject.

## **NEXT STEPS**

Staff recommends that the Planning Commission review questions posed in the Discussion section. Specifically, Planning Commission is asked to confirm that:

- Amendments in Category 1 will be added to draft ADU Ordinance, and
- Amendments in Category 2 will be left out of draft ADU Ordinance.

Planning Commission is also asked to provide guidance on the four topics presented in Category 3:

- Removing Three-Year Exception to Occupancy Requirement
- Increase Maximum Height and Clarify Calculations
- Increasing Gross Floor Area
- Not Allowing AUPs to Modify Maximum Height and Gross Floor Area

Unless Planning Commission provides other guidance, staff will bring these amendments back to the Planning Commission on January 17, 2018 for a Public Hearing. Note that the Public Hearing will involve changes to Berkeley's ADU Ordinance and will also involve changes to allowable uses in the expanded districts identified in Category 1 Amendments.

#### **ATTACHMENTS**

Attachment 1: City Council Staff Report on ADU Ordinance Amendments

Attachment 2: October 4, 2017 Staff Report on ADU Ordinance Amendments

Attachment 3: Table Comparing ADU Development Standards

Attachment 4: Table of Category 1 Amendments

Chapter ~~23D.10~~ **23C.24**  
Accessory Dwelling Units

**Sections:**

~~23D.10.010~~ **23C.24.010** Applicability of Regulations

~~23D.10.020~~ **23C.24.020** Purposes

~~23D.10.030~~ **23C.24.030** Permit ~~Requirement~~ **Procedures**

~~23C.24.040~~ **Special Provisions**

~~23D.10.040~~ **23C.24.050** ~~Accessory Dwelling Unit Development~~ **Standards**

~~23D.10.050~~ **23C.24.060** ~~Accessory Dwelling Units may modify~~ **Modification of**

~~Development s~~ **Standards with an Administrative Use Permit**

~~23D.10.060~~ **23C.24.070** Findings

~~23D.10.010~~ **23C.24.010** Applicability of Regulations

The provisions of this Chapter ~~shall~~ apply to all lots that are occupied by one ~~legally established~~ Single Family Dwelling Unit and zoned ~~R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU~~ except in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MULI), and Unclassified (U).

~~23D.10.020~~ **23C.24.020** Purposes

The purposes of this Chapter are to:

A. Implement California Government Code Section 65852.2, as it may be amended from time to time.

AB. Increase ~~the overall~~ supply and range of housing options in Berkeley while maintaining ~~the~~ residential character of neighborhoods.

~~B.—Encourage new housing units to locate near transit and provide alternative transportation options to residents.~~

C. Minimize ~~the~~ impacts of ~~the~~ new ~~a~~Accessory ~~d~~Dwelling ~~u~~Units on neighboring properties.

D. Expedite small-scale infill development on lots with Single Family Dwellings, particularly where development potential is limited.

28 E. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and  
29 increasing the number of housing units that are more affordable to Berkeley residents.

30 F. Encourage development of Accessory Dwelling Units in zoning districts with compatible land  
31 uses and infrastructure.

32 **~~23D.10.030~~ 23C.24.030 Permit Requirement Procedures**

33 The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in  
34 compliance with this Chapter if all requirements of Section ~~23D.10.040~~ 23C.24.050 and other  
35 applicable requirements of this Title are met. The Zoning Officer may approve an **Administrative**  
36 **Use Permit (AUP)** to establish an Accessory Dwelling Unit that is not in compliance with  
37 Section ~~23D.10.040.B~~, ~~as set forth in Section 23D.10.050~~ Section 23C.24.050.A or  
38 Section 23C.24.050.D thru G, subject to the findings in Section 23C.24.070

39 **~~A. 23C.24.040~~ Special Provisions:**

40 A. ~~4.~~ An Accessory Dwelling Unit may be created as follows:

41 ~~b~~1. Conversion of Existing Space: Within the existing dimensions of the exterior walls  
42 and/or roof of a **Primary Dwelling Unit** or an existing legally established **Accessory**  
43 ~~s~~Structure or **Accessory b**Building (e.g., the building envelope does not change), in which  
44 case Sections 23C.24.050.C through F do not apply.

45 ~~a~~2. Expansion of Existing Space: By extending the existing dimensions of the exterior walls  
46 and/or roof of a **Primary Dwelling Unit** or an existing legally established **Accessory**  
47 ~~s~~Structure or **Accessory b**Building (e.g., the building envelope changes). **Non-conforming**  
48 provisions of Section 23C.040 apply.

49 **3. New Building:** ~~or b~~By constructing a new detached building, ~~except that the following~~  
50 ~~height limits and setback requirements shall apply:~~ or by constructing a new **Primary**  
51 **Dwelling Unit and Accessory Dwelling Unit.**

52 B. Only one Accessory Dwelling Unit is allowed on a lot.

53 ~~4.C.~~ An Accessory Dwelling Unit may not be subdivided, whether by ~~no subdivision of land,~~ or  
54 air rights, ~~or~~ condominium or other mechanism, and may not be sold ~~is allowed so as to enable~~  
55 ~~the sale~~ or transferred independently of the ~~Accessory Dwelling Unit independently of the main~~  
56 **Primary Dwelling Unit** or other portions of the property.

57 ~~2.D.~~ The owner of a property that has an Accessory Dwelling Unit must reside in either the  
58 Primary Dwelling Unit or the Accessory Dwelling Unit. Prior to issuance of a Building Permit, all  
59 owners of record of the subject property shall sign and file a Declaration of Restrictions with the  
60 County Recorder, in a form satisfactory to the Zoning Officer, ~~which that~~ makes any transfer of  
61 the property specifically subject to the restrictions contained in this ~~section, Chapter~~ and  
62 requires that either the ~~p~~Primary Dwelling Unit or the Accessory Dwelling Unit be occupied by  
63 the owner of the subject property. Non-occupancy ~~of by~~ an owner for periods of up to three  
64 years ~~are is~~ allowed before the property will be found to be in non-compliance with this  
65 requirement.

66 ~~3.E~~ An Accessory Dwelling Units ~~shall is~~ not ~~be~~ required to ~~be equipped with provide~~ fire  
67 sprinklers; if ~~they~~ sprinklers are not required for the ~~p~~Primary ~~residence~~ Dwelling Unit,  
68 ~~consistent with, as specified in~~ California Government Code Section [65852.2\(e\)](#).

69 ~~4.F~~ An Accessory Dwelling Units ~~shall is~~ not ~~be~~ considered a new residential uses for the  
70 purposes of calculating utility connection fees or capacity charges, ~~subject to the following~~  
71 ~~provisions:~~

72 ~~a.1.~~ An Accessory Dwelling Unit created ~~within the footprint of or by addition to a single~~  
73 ~~family residence~~ by Conversion of Existing Space or by Expansion of Existing Space within  
74 the Primary Dwelling Unit:

75 ~~i.a.~~ ~~may not be is not~~ required to install a new or separate utility connection between  
76 the Accessory Dwelling Unit and the utility, and

77 ~~ii.b.~~ ~~may not be is not~~ required to pay a related connection ~~free~~ or a capacity charge.

78 ~~B2.~~ An ~~freestanding~~ Accessory Dwelling Unit ~~created by New Building or by Expansion~~  
79 ~~or Conversion of Existing Space in an Accessory Structure or Accessory Building~~ may be  
80 required to install a separate utility connection between it and the utility, and may be  
81 assessed a connection fee or usage charge. However, that fee or charge shall be  
82 proportionate to the burden it would create and shall not exceed the reasonable cost of  
83 providing that service.

84 ~~B. 23C.24.050 Development Standards.~~

85 ~~6-A.~~ Fire Access Requirement: An ADU Accessory Dwelling Unit may only be approved when  
86 located on a lot ~~with access from a roadway~~ with a minimum 26 feet in pavement width, unless  
87 an ~~Administrative Use Permit (AUP)~~ is approved to allow location on a lot with access from a  
88 roadway less than 26 feet in pavement width, subject to the findings specified in Section  
89 ~~23C.24.070.A.~~

90 ~~2B.~~ Unit Size: The ~~g~~Gross ~~f~~Floor ~~a~~Area of an Accessory Dwelling Unit shall be no greater than  
91 750 square feet or 75% of the ~~g~~Gross ~~square footage~~ Floor Area of the ~~p~~Primary ~~residence~~  
92 Dwelling Unit, whichever is less, as measured upon completion of the conversion, addition or  
93 new construction.

94 ~~#C.~~ Height:

95 1. An Accessory Dwelling Unit that is created by New Building or by Addition to an  
96 Accessory Structure or Building:

97 a. Cannot be more ~~In no case shall the building be taller~~ than 14 feet in ~~m~~Maximum  
98 ~~h~~Height. ~~as measured at the highest point of the roof, taller than the main dwelling~~  
99 ~~unit, or have an eave height higher than 10 feet. In the case of a shed or flat roof, no~~  
100 ~~portion of the building may be more than 10 feet in height when measured at the~~  
101 ~~required setback.~~

102 b. can be 14 feet in Average Height if the lot is in the Hillside Overlay District, subject  
103 to securing an Administrative Use Permit (AUP).

104 2. An Accessory Dwelling Unit that is created by an addition to a Primary Dwelling Unit  
105 is subject to the Residential Addition height limitations and permit thresholds of the  
106 zoning district in which it is located.

107 D. Setbacks:

108 ~~i1. In no case shall the building~~ An Accessory Dwelling Unit must be located ~~within~~  
109 ~~outside~~ the required front yard setback.

110 ~~ii2. The building shall~~ An Accessory Dwelling Unit must be set back at least ~~four~~ 4 feet  
111 from the rear and side property lines.

112 4E. Usable Open Space: The ~~subject lot shall~~ Accessory Dwelling Unit and the Primary  
113 Dwelling Unit must together meet the usable open space ~~and coverage~~ requirements of the  
114 applicable zoning district in which they are located.

115 ~~3.—An Accessory Dwelling Unit may be created by conversion of floor area in a pre-~~  
116 ~~existing primary dwelling unit, or by an addition thereto, subject to providing a separate~~  
117 ~~entrance that is not located on the front of the primary dwelling unit and complying with the~~  
118 ~~requirements of the applicable zoning district for residential additions.~~

119 F. Lot Coverage: The Accessory Dwelling Unit and the Primary Dwelling Unit must together  
120 meet the lot coverage requirements of the zoning district in which they are located.

121 5G. Parking Requirements:

122 a1. Parking ~~shall is~~ not ~~be~~ required for an Accessory Dwelling Unit.

123 b2. If ~~creation of~~ an Accessory Dwelling Unit removes a required off-street parking  
124 space for the ~~p~~Primary ~~d~~Dwelling ~~u~~Unit, ~~the subject lot shall provide one~~ an off-street  
125 parking space must be provided. Replacement parking may be located within the  
126 required front and side yard setbacks. ~~in conformance with Chapter 23D.12.~~

127 e3. Replacement parking ~~shall not be~~ is subject to ~~the applicable standards of~~ Traffic  
128 Engineering requirements of Section ~~23D.12.050 nor Section 23D.12.080 23D.12.040,~~  
129 ~~and may be located within the required front and side setbacks when located within an~~  
130 ~~existing driveway that does not comply with these standards.~~

131 ~~23D.10.050 23C.24.060 Modification of Development Standards Accessory Dwelling Units~~  
132 ~~may modify standards~~ with an Administrative Use Permit

133 An Accessory Dwelling Unit that does not conform with the ~~Development s~~Standards in  
134 Section ~~23D.10.040-B 23C.24.050 D thru F~~ may be permitted with an Administrative Use Permit  
135 subject to the applicable findings in Section ~~23D.10.060 23C.24.070.~~

136 ~~23D.10.060 23C.24.070 Findings~~

137 A.—~~In order to deny an Administrative Use Permit under Section 23D.10.050, the Zoning~~  
138 ~~Officer or Zoning Adjustments Board shall find that the Accessory Dwelling Unit would be~~  
139 ~~detrimental to the residential character of the neighborhood, or would unreasonably obstruct~~

140 ~~sunlight, air, or views, or would introduce unreasonable privacy impacts to the immediate~~  
141 ~~neighbors.~~

142 ~~B. In order to approve an Administrative Use Permit under Section 23D.10.050 to waive~~  
143 ~~required Accessory Dwelling Unit parking, the Zoning Officer or Zoning Adjustments Board shall~~  
144 ~~find that additional or new on-site parking would be detrimental, and that granting the waiver will~~  
145 ~~meet the purposes of this Chapter.~~

146 ~~GA.~~ In order to approve an Administrative Use Permit under  
147 Section ~~23D.10.050~~ 23C.24.050.A to allow an ~~ADU~~ **Accessory Dwelling Unit** on a lot with  
148 access from a roadway with less than 26 feet in pavement width, the **Zoning Officer must be**  
149 **provided with evidence that the Fire Chief shall find has determined that sufficient fire flow and**  
150 **water pressure are available to the project will** meet minimum fire safety requirements.

151 **B. The Zoning Officer may not approve an Administrative Use Permit to vary from the**  
152 **development standards of this Chapter unless the Zoning Officer finds that the Accessory**  
153 **Dwelling Unit is not otherwise feasible because of unusual lot and/or building configurations**  
154 **that limit access, affect constructability, or otherwise present unique hardships, and that the**  
155 **Accessory Dwelling Unit would not be detrimental to the residential character of the**  
156 **neighborhood, would not unreasonably obstruct sunlight, air, or views, and would not**  
157 **introduce unreasonable privacy impacts to the immediate neighbors.**

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#### 160 **23F.04.010 Definitions**

161 **Accessory Dwelling Unit:** A secondary ~~Dwelling~~ **Unit that is located** on a lot which is also  
162 occupied by one **legally established** Single Family Dwelling ~~and zoned single family residential~~  
163 ~~(R-1), or a secondary unit approved under the provisions for Accessory Dwelling Units on a lot~~  
164 ~~which is occupied by one Single Family Dwelling and zoned R-1A, R-2, R-2A, R-3, R-4, R-5, R-~~  
165 ~~S or R-SMU that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit~~  
166 **must comply with local building, housing, safety and other code requirements and provide the**  
167 **following features independent of the Single Family Dwelling: 1) exterior access to the**  
168 **Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom.**  
169 **An Accessory Dwelling Unit also includes the following:**



- 170 A. An efficiency unit, as defined in Section [17958.1](#) of the Health and Safety Code.
- 171 B. A manufactured home, as defined in Section [18007](#) of the Health and Safety Code.

172 **Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an  
 173 **Accessory Dwelling Unit.**

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**EXAMPLE CODE REFERENCE UPDATE:  
 Updating code references in applicable “Permitted Uses” tables in Districts where  
 ADUs are Currently Permitted**

The following table excerpt is an example of what needs to be updated from the R-1 chapter of the Zoning Ordinance. This same update is necessary in R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU Chapters.

183 **23D.16.030 Uses Permitted**

<i>Table 23D.16.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with Section <del>23D.10.040</del> <a href="#">23C.24</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <del>23D.10.040</del> <a href="#">23C.24.50</a>	AUP	Subject to making applicable findings in Section <del>23D.10.060</del> <a href="#">23C.24.070</a>

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**EXAMPLE CODE REFERENCE UPDATE:  
 Updating the “Permitted Uses” tables in all Commercial districts and Mixed-Use Residential (MUR).**

The following table excerpt is an example of what needs to be updated from the C-1 chapter of the Zoning Ordinance. This same update is necessary in C-E, C-N, C-NS, C-SA, C-SO, C-T, C-W, C-DMU, and MULI Chapters.

197 **23E.36.030 Uses Permitted**

<i>Table 23E.36.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Uses and Structures	Per R-3 District	See Table <a href="#">23D.36.030</a>
Accessory Dwelling Units in compliance with Section 23C.24	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.50	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>

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- 29 F. Encourage development of Accessory Dwelling Units in zoning districts with  
30 compatible land uses and infrastructure.

31 **23C.24.030 Permit Procedures**

32 The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling  
33 Unit in compliance with this Chapter if all requirements of Section [23C.24.050](#) and other  
34 applicable requirements of this Title are met. The Zoning Officer may approve an  
35 Administrative Use Permit (AUP) to establish an Accessory Dwelling Unit that is not in  
36 compliance with Section [23C.24.050 A](#) or Sections [23C.24.050.D thru G](#), subject to the  
37 findings in Section [23C.24.070](#).

38 **23C.24.040 Special Provisions**

- 39 A. An Accessory Dwelling Unit may be created as follows:
- 40 1. Conversion of Existing Space: Within the existing dimensions of the exterior walls  
41 and roof of a Primary Dwelling Unit or an existing legal structure or building (e.g.,  
42 the building envelope does not change), in which case Sections [23C.24.050.C](#)  
43 [through F](#) do not apply.
  - 44 2. Expansion of Existing Space: By extending the existing dimensions of the  
45 exterior walls and/or roof of a Primary Dwelling Unit or of an existing legally  
46 established Accessory Structure or Accessory Building (e.g., the building envelope  
47 changes). Non-conforming provisions of Section 23C.040 apply.
  - 48 3. New Building: By constructing a new detached building or by constructing a new  
49 Primary Dwelling Unit and Accessory Dwelling Unit.
- 50 B. Only one Accessory Dwelling Unit is allowed on a lot.
- 51 C. An Accessory Dwelling Unit may not be subdivided, whether by land or air rights,  
52 condominium or other mechanism, and may not be sold or transferred independently of  
53 the Primary Dwelling Unit or other portions of the property.
- 54 D. The owner of a property that has an Accessory Dwelling Unit must reside in either  
55 the Primary Dwelling Unit or the Accessory Dwelling Unit. Prior to issuance of a  
56 Building Permit, all owners of record of the subject property shall sign and file a  
57 Declaration of Restrictions with the County Recorder, in a form satisfactory to the  
58 Zoning Officer, that makes any transfer of the property specifically subject to the

59 restrictions contained in this Chapter and requires that either the Primary Dwelling Unit  
60 or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-  
61 occupancy by an owner for periods of up to three years is allowed before the property  
62 will be found to be in non-compliance with this requirement.

63 E. An Accessory Dwelling Unit is not required to be equipped with fire sprinklers if  
64 sprinklers are not required for the Primary Dwelling Unit, consistent with California  
65 Government Code Section [65852.2](#).

66 F. An Accessory Dwelling Unit is not considered a new residential use for the  
67 purposes of calculating utility connection fees or capacity charges, subject to the  
68 following provisions:

69 1. An Accessory Dwelling Unit created by Conversion of Existing Space or by  
70 Expansion of Existing Space within the Primary Dwelling Unit:

- 71 a. is not required to install a new or separate utility connection between the  
72 Accessory Dwelling Unit and the utility, and  
73 b. is not required to pay a related connection fee or a capacity charge.

74 2. An Accessory Dwelling Unit created by New Building or by Expansion or  
75 Conversion of Existing Space in an Accessory Structure or Accessory Building may  
76 be required to install a separate utility connection between it and the utility, and  
77 may be assessed a connection fee or usage charge. However, that fee or charge  
78 shall be proportionate to the burden it would create and shall not exceed the  
79 reasonable cost of providing that service.

## 80 **23C.24.050 Development Standards**

81 A. Fire Access Requirement: An Accessory Dwelling Unit may only be approved when  
82 located on a lot with a minimum 26 feet in pavement width, unless an Administrative  
83 Use Permit (AUP) is approved to allow location on a lot with access from a roadway  
84 less than 26 feet in pavement width, subject to the findings specified in Section  
85 [23C.24.070 A](#).

86 B. Unit Size: The Gross Floor Area of an Accessory Dwelling Unit may be no greater  
87 than 750 square feet or 75% of the Gross Floor Area of the Primary Dwelling Unit,

88 whichever is less, as measured upon completion of the conversion, addition or new  
89 construction.

90 C. Height:

91 1. An Accessory Dwelling Unit that is created by New Building or by expansion to  
92 an Accessory Structure or Accessory Building:

93 a. cannot be more than 14 feet in Maximum Height.

94 b. can be 14 feet in Average Height if the lot is in the Hillside Overlay District,  
95 subject to securing an Administrative Use Permit (AUP).

96 2. An Accessory Dwelling Unit that is created by an addition to a Primary Dwelling  
97 Unit is subject to the Residential Addition height limitations and permit  
98 thresholds of the zoning district in which it is located.

99 D. Setbacks:

100 1. An Accessory Dwelling Unit must be located outside the required front yard  
101 setback.

102 2. An Accessory Dwelling Unit must be set back at least 4 feet from the rear and  
103 side property lines.

104 E. Usable Open Space: The Accessory Dwelling Unit and Primary Dwelling Unit each  
105 must together meet the usable open space requirements of the zoning district in  
106 which they are located.

107 F. Lot Coverage: The Accessory Dwelling Unit and the Primary Dwelling Unit must  
108 together meet the lot coverage requirements of the zoning district in which they are  
109 located.

110 G. Parking Requirements:

111 1. Parking is not required for an Accessory Dwelling Unit.

112 2. If creation of an Accessory Dwelling Unit removes a required off-street parking  
113 space for the Primary Dwelling Unit, an off-street parking space must be provided.  
114 Replacement parking may be located within the required front and side yard  
115 setbacks.

116 3. Replacement parking is subject to Traffic Engineering requirements of Section  
117 [23D.12.040](#).

118 **23C.24.060 Modification of Development Standards with an Administrative Use**  
119 **Permit**

120 An Accessory Dwelling Unit that does not conform with the Development Standards in  
121 Section [23C.24.050 D thru F](#) may be permitted with an Administrative Use Permit  
122 subject to the applicable findings in Section [23C.24.070](#).

123 **23C.24.070 Findings**

124 A. In order to approve an Administrative Use Permit under Section [23C.24.050.A](#) to  
125 allow an Accessory Dwelling Unit on a lot with access from a roadway with less  
126 than 26 feet of pavement width, the Zoning Officer must be provided with  
127 evidence that the Fire Chief has determined that the project will meet minimum  
128 fire safety requirements.

129 B. The Zoning Officer may not approve an Administrative Use Permit to vary from  
130 the development standards of this Chapter unless the Zoning Officer finds that  
131 the Accessory Dwelling Unit is not otherwise feasible because of unusual lot  
132 and/or building configurations that limit access, affect constructability, or  
133 otherwise present unique hardships, and that the Accessory Dwelling Unit would  
134 not be detrimental to the residential character of the neighborhood, would not  
135 unreasonably obstruct sunlight, air, or views, and would not introduce  
136 unreasonable privacy impacts to the immediate neighbors.

137 **23F Definitions**

138 **Accessory Dwelling Unit:** A secondary Dwelling Unit that is located on a lot which is  
139 also occupied by one legally established Single Family Dwelling and that conforms to  
140 the standards of Section [23C.24](#). An Accessory Dwelling Unit must comply with local  
141 building, housing, safety and other code requirements and provide the following  
142 features independent of the Single Family Dwelling: 1) exterior access to Accessory  
143 Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; 4) and a full bathroom.  
144 An Accessory Dwelling Unit also includes the following:

145 A. An efficiency unit, as defined in Section [17958.1](#) of the Health and Safety Code.

146 B. A manufactured home, as defined in Section [18007](#) of the Health and Safety Code.

147 **Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot  
148 with an Accessory Dwelling Unit.



To: Planning Commission

From: Debbie Sanderson, Co-chair  
ADU Task Force

Date: January 9, 2018

Re: PC Meeting January 17, 2018  
Proposed ADU Zoning Amendments

The ADU Task Force encourages the Planning Commission to recommend the following amendments to the ADU Ordinance (BMC Chapter 23D.10). We have two objectives:

1. Increase housing units: Encourage construction of more by-right accessory dwelling units
2. Ensure equity for lower-income homeowners

### **Development Standards:**

1. Height: Increase the allowed ADU height to 18-foot maximum, citywide.

Why:

- On smaller parcels, the allowed ADU square footage is larger than the allowed ADU footprint – as a result, ADUs need to be taller, with a second story or a loft, rather than all at ground level.
- ADUs with a comfortable loft need 18ft maximum height -- 1 ft. (foundation), 8 ft. (first floor), 1 ft. (between floors), 7 ft. (loft clearance), and 1 ft (roof).

2. Size & Lot Coverage limits: Do not impose ADU size and lot coverage limits when an ADU stays within an existing building's footprint.

Why:

- On smaller parcels, often the only opportunity to build an ADU is to raise the building or finish off an existing basement or attic. These actions increase the number of floors, which in turn reduce the allowed lot coverage. The project then violates the lot coverage and cannot be built by right.
- When adding a floor to an existing home, the floorplate may be larger than the allowed ADU size, requiring subdivision of the new floor in an awkward way. Allowing the ADU to occupy the entire new floor makes more sense.

3. Size: Increase the maximum allowed ADU size from 75% to 85% of the existing home, and the maximum size from 750 sq. ft. to 850 sq. ft.

Why:

- Increasing the percentage increases flexibility for owners of smaller homes.
- Increasing the size makes it easier for homeowners to build housing that meets their needs.

4. Units Per Lot – Allow a second unit (either ADU or Junior ADU) on a lot, if development standards could still be met.  
Why:
  - Allows unusually large lots (or lots with very small houses) to provide additional housing.
  - Encourages a better use of excess open space.
5. ADU Options with an AUP: Maintain the current options to request an AUP to build an ADU that does not meet the by-right standards.  
Why:
  - Maximizes flexibility to build ADUs.

### **Demolition**

Confirm that “converting” an existing accessory building to an ADU allows demolition, as long as the original building massing within the setback is maintained.

Why:

- Berkeley zoning code already allows replacement of dilapidated accessory buildings by right; this change would encourage ADUs by allowing homeowners to demolish the dilapidated building and rebuild it as an ADU with one building permit.
- Allows avoidance of 1 to 2” property boundary disputes (can easily move the replacement building over a few inches).
- The change will result in better quality housing that costs homeowners less than the extensive efforts required to maintain the dilapidated building exterior.

### **Uses:**

1. Owner Occupancy: Remove the owner occupancy requirement for ADUs  
Why:
  - Results in construction of more housing
  - Conservatively estimated, 2,000 single-family homes in Berkeley are rented, not owner occupied, and eligible for ADUs.
2. Short-term Rental: Remove the restriction that ADUs may not be used as short-term rentals.  
Why:
  - In cities that allow homeowners to use ADUs as short-term rentals, only a small percentage choose to do so. Examples below provide the percentage of ADUs, at a single point in time, that are used for short-term rental and/or permanent housing:
    - i. Four Oregon cities (2013): 4% short-term, 81% permanent housing;
    - ii. Portland, Seattle, Vancouver (2017): 12% short-term; 60% permanent housing;
    - iii. East Bay (2012): 85% permanent housing (estimate of ADUs built with and without permits).
  - Owners often temporarily use their ADUs as short-term rentals when they are between two long-term uses.

**TO: Cannabis Commission**

**FROM: Elizabeth Greene, Secretary**

**SUBJECT: Comprehensive Cannabis ordinances**

**DATE: January 18, 2018**

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City staff from the Planning, Environmental Health, Public Health, Finance, Police, Fire, and Code Enforcement departments, as well as the City Attorney's office, have drafted a proposed set of new cannabis regulations. The proposal consists of draft cannabis ordinances and a selection process for certain license types. The purpose of these regulations is to:

1. Respond to a Council referral (Attachment 1);
2. Develop regulations for new license types permitted by the State so businesses can be approved/selected to operate in Berkeley;
3. Ensure that existing and proposed ordinances are consistent with State regulations; and
4. Simplify and clarify the ordinances.

This memo and its attachments guide the Commission through the ordinances and the approval process. It outlines:

- the focus of the proposed changes to the Berkeley Municipal Code (BMC) and the Zoning Ordinance (ZO),
- the significant changes and new language,
- the new ordinance chapters being created, and
- the next steps in approving the ordinances and selection. Information about the selection process will be included with the February 1, 2018 packet.

### **Focus of changes and new language**

Changes to the BMC and ZO fall into two categories:

- General clean-up; and
- Revisions to reflect State regulations or new cannabis activities.

The clean-up language will cover such issues as changes to terms (i.e., Medical to Medicinal, Member to Customer), the addition of new definitions, and the removal of regulations that duplicate State regulations (i.e. background checks). These changes are not expected to change the current direction of the Berkeley ordinances.

The other revisions are more specific to cannabis uses. The changes in this category create regulations to match State license types that currently do not exist in Berkeley Ordinances, and may also change regulations for existing license types. The Existing and Proposed Regulations matrix (Attachment 2) identifies these changes.

**Existing and Proposed Regulations Matrix**

The most straightforward way to learn how these changes would affect the way cannabis businesses could operate in Berkeley is to review the Existing and Proposed Regulations matrix. This matrix outlines existing regulations by business type, and shows how they would change with the new ordinances. Issues that do not involve a specific business type (billboards, lounges, etc.) are included at the end of the matrix. The code sections of the existing and proposed language are called out in the matrix; copies of the existing and proposed ordinances are also included with this memo.

**Documents to be revised or created**

The BMC and the ZO will be reorganized in order to make the information easier to find and less repetitive between chapters.

BMC: Three existing BMC chapters will be combined into two new chapters:

Topic	Chapter to be Deleted	New Chapter
General Regulations (Definitions, Operating Standards)	12.23	12.21 (includes Chapter 12.23 plus issues from 12.25 and 12.27 – security, records, etc. – that apply to all license types)
Cultivation	12.25	12.22
Dispensaries/ Collectives	12.27	12.22
Other license types	N/A	12.22

Of the noted chapters, 12.25 and 12.27 have extensive redundancies. These redundancies are being removed and the chapters consolidated into Chapter 12.22. Chapter 12.23, along with portions of 12.25 and 12.27 will become Chapter 12.21. Existing Chapter 12.26 does not change. The new chapters are included as Attachments 3 and 4. One additional BMC chapter, 20.XX is proposed for regulating cannabis advertising (see Attachment 5).

Versions of the deleted chapters with references to the new location of existing information are also attached (Attachment 6).

ZO: The Zoning Ordinance currently includes Cannabis use regulations in two chapters: 23E.16 and 23E.72 (M District). This information will be consolidated into a new Chapter: “Cannabis Uses” (23C.25). This chapter, along with minor changes to use tables in Commercial and Manufacturing districts and a new Definition (Cannabis Uses), are included in Attachment 7. The original language in Chapters 23E.16 and 23E.72 is included in Attachment 8.

## Next Steps in Approval Process

Commission review: Four commissions will hold public meetings to review the proposals and provide an opportunity for public comment: Cannabis Commission (CC), Planning Commission (PC), Housing Advisory Commission (HAC) and Community Health Commission (CHC).

The HAC and the CHC will review specific components of the proposals at their respective February meetings (February 1, 2018 and February 22, 2018) and may provide feedback to the Council. The CC and PC will provide recommendations to the Council on all or portions of the cannabis proposals:

*Cannabis Commission:* Recommendations on the draft BMC, ZO and selection process. Anticipated Timeline: January 18<sup>th</sup> and February 1<sup>st</sup> meetings.

*Planning Commission:* Recommendations on the draft ZO. Anticipated timeline: February 7<sup>th</sup> and February 21<sup>st</sup> meetings.

All four commissions will hold public meetings to review the proposals and will provide an opportunity for public comment.

Finalize comments and draft report(s): As the commissions review the proposals, staff will draft the staff reports and any necessary commission reports for Council. Included in these reports will be discussions of the staffing impacts and fees necessary to enact the proposals and recommendations. Modifications may be made to the proposals based on commission discussion and public comment.

Council consideration: Based on the commission schedule above, the Council could consider the draft proposals, recommendations and other feedback at a meeting between April 24<sup>th</sup> and May 15<sup>th</sup>.

### Attachments:

1. 7-25-17 Council referral (without attachments)
2. Matrix of existing and proposed ordinances/regulations
3. Draft BMC Chapter 12.21
4. Draft BMC Chapter 12.22
5. Draft BMC Chapter 20.XX (Advertising)
6. Existing BMC chapters related to cannabis with changes
7. Draft ZO changes
8. Existing ZO sections with changes

## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing Regs (Ord)	Proposed Regs (Ord)
Retail: Medicinal Use	Location	In any C-prefixed district (ZO 23E.16.070.A.1)	Same (ZO 23C.25.010.F)
	Quota limit	6 (ZO 23E.16.070.A.1)	Same (ZO 23C.25.010.F)
	Buffer	600' away from other cannabis retailers and schools with K-12 students (ZO 23E.16.070.A.2)	Same (ZO 23C.25.010.B)
	Security	Requirements for lighting, licensed, unarmed security guards, camera coverage, alarm system, storage of product and cash, bars on openings if no guards after hours. (BMC 12.27.050.E)	Same, with addition that any State requirements that are stricter will apply (BMC 12.21.040.G)
	On-site consumption	Allowed for non-combustible products (vaping, edibles, topicals, etc.) (BMC 12.27.050.G)	Language clarified to specifically allow non-combustible consumption at Retailers which allow customer visits. Removed language about smoking of cannabis within 50 feet of a Retailer (BMC 12.21.040.I and 12.22.040.G)
	Selection process	MBAP (Resolution 66,711-N.S.)	TBD, see Selection Process section (under Other topic)
	Change in location - relocation	Cannabis Commission review.	No recommendation yet
	Change in location - expansion	AUP if legal, non-conforming dispensary; otherwise assumed same as non-cannabis businesses	No recommendation yet
	Changes in ownership	No regulations	No recommendation yet
	Delivery regulations	Delivery permitted per definition, but no regulations (BMC 12.23.020.K.2)	Same delivery regulations as for delivery-only dispensaries (BMC 12.22.040.H)
Retail: Adult Use (No current regs. Proposed regs same as medicinal, except as shown)	Location	N/A	All C-prefixed districts (ZO 23C.25.010.G)
	Quota limit	N/A	Limit of 12, (ZO 23C.25.010.G)

## Existing and Proposed Cannabis Regulations

<b>Topic</b>	<b>Subtopic</b>	<b>Existing Regs (Ord)</b>	<b>Proposed Regs (Ord)</b>
Retail: Delivery-only ("Existing regs" are those proposed by Cann Comm and Planning Comm)	Location	All C-prefixed districts except C-N (recommended by Planning Comm)	All C-prefixed districts and in M-prefixed districts as an ancillary use to another cannabis business (recommended by staff) (ZO 23C.25.010.H.2)
	Quota limit	None (recommended by Cannabis Comm)	10 (recommended by staff) (ZO 23C.25.010.H.1)
	Buffer	Same as medicinal retail (ZO 23E.16.070.A.2)	Same (ZO 23C.25.010.B)
	Selection process	No recommendation regarding discretionary review (Planning Commission)	Same selection process as other Retailers
Delivery-specific requirements		Vehicle and driver requirements, insurance, signage, deliveries only to residence or business of Member. Only applied to delivery-only dispensaries (recommended by Cannabis Commission)	Same, but deliveries can only be to a residence. Regulations will apply to any Retailer making deliveries to patients. (BMC 12.22.040.H)

## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing regs (ord)	Proposed regs (ord)
Cultivation	Location	M District only (ZO 23E.72.040.A)	Same (ZO 23C.25.020.A)
	Size	Maximum 22,000 sf (area of cultivation and associated uses) (ZO 23E.72.040.A.3)	Same maximum size, but measured by canopy area (ZO 23C.25.020.A.3)
	Quota limit	180,000 sf cap on all commercial cultivation in city. (No decision on numeric quota for businesses) (ZO 23E.72.040.A.4)	180,000 sf cap still applies. Numeric limit of 6 for businesses between 10,001 sf and 22,000 sf. No numeric limit for businesses under 10,000 sf, but 180,000 cap applies (ZO 23C.25.020.A.4, 5 and 6)
	Buffer	600' away from schools with K-12 students (ZO 23E.72.040.B)	300' away from schools with K-12 students (ZO 23C.25.020.C)
	Security	Requirements for lighting, licensed, unarmed security guards, camera coverage, alarm system, storage of product and cash, bars on openings if no guards after hours. (BMC 12.25.050.E)	Same, with addition that any State requirements that are stricter will apply (BMC 12.21.040.G)
	On-site consumption	Not permitted, except for employees with medical needs (BMC 12.25.050.G.1 and 4)	Same, except remove BMC 12.25.050.G.4 (BMC 12.21.040.I and 12.22.040.G)
	Selection process	Yes, but no decision on type	Yes
	Change in location - relocation	N/A	No recommendation yet
	Change in location - expansion	N/A	No recommendation yet
	Changes in ownership	N/A	No recommendation yet
Nurseries	Not mentioned	Businesses applying for a State Nursery permit must obtain the specific permits required for cultivation use at the site. (BMC 12.21.020 (definition))	



## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing regs (ord)	Proposed regs (ord)
Manufacturing	Location	Same as non-cannabis Light Manufacturing (ZO 23E.16.070.C)	Same (ZO 23C.25.030)
	Quota limit	None required (not mentioned)	Same (not mentioned)
	Buffer	None required (not mentioned)	300' away from schools with K-12 students (ZO 23C.25.020.B)
	Security	None required (not mentioned)	Same as dispensaries, cultivators and distributors for security, lighting, alarm system, storage of product and cash. No local requirement for guards and cameras. (BMC 12.21.040.G)
	On-site consumption	Not mentioned	Remove BMC 12.25.050.G.4 (BMC 12.21.040.I and 12.22.040.G)
	Selection process	None (not mentioned)	Same (not mentioned)
	Change in location - relocation	Same as non-cannabis Light Manufacturing	Same (not mentioned)
	Change in location - expansion	Same as non-cannabis Light Manufacturing	Same (not mentioned)
	Changes in ownership	Same as non-cannabis Light Manufacturing	Same (not mentioned)
Testing (same as Manufacturing, except as shown)	Location, changing location, expansion	Same as non-cannabis testing (23E.16.070.C)	Same (ZO 23C.25.030)
R&D (same as Manufacturing, except as shown)	Location, changing location, expansion	Same as non-cannabis R&D (23E.16.070.C)	Same (State license type = Manufacturing) (ZO 23C.25.030)
Distributor (same as Manufacturing, except as shown)	Security	N/A	Same as Retailer and Cultivator (BMC 12.21.040.G)
	Location, changing location expansion	N/A	Same as non-cannabis Wholesale Use (ZO 23C.25.030)
Microbusiness	Not called out in ordinance as a separate use. Businesses applying for a State microbusiness permit must obtain the specific permits required for the individual uses at the site. Any use that is included at a microbusiness site must meet the same requirements (location, buffer, quota, selection, security, etc) as if the use was a sole operator. (BMC 12.21.020 (definition))		

## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing regs (ord)	Proposed regs (ord)
General for all businesses	New definitions	N/A	Added new definitions to address new State regulations (BMC 12.21.020)
	Revised definitions		Revised definitions to address new State regulations (BMC 12.21.020)
	Patient requirements and physician recommendations	Any person associated with a medical cannabis business must be a Qualified Patient or Primary Caregiver and members of the collective (State law, BMC 12.23.030.B and D, 12.26.040.B, 12.26.070.A and B, 12.27.050.D)	Remove references to membership requirements, including BMC 12.23.030.B and D, and 12.27.050.D (BMC 12.21.040)
	Ownership/profit status	Must operate as a collective and not-for-profit (State law, BMC 12.25.090.B.1, 12.27.090.B.1)	Removed both requirements
	Background checks	Businesses cannot be operated by or hire people with convictions for specific crimes (BMC 12.23.030.F)	Removed requirement – defer to State.
	Odor control	Not mentioned	Odor control plan language added (BMC 12.21.040.E)
	Non-diversion plan	Only for Dispensaries and Cultivators (BMC 12.25.050.B, 12.27.050.B)	Expanded to all Cannabis Businesses (BMC 12.21.040.F)
	Neighborhood compatibility	Only for Dispensaries and Cultivators (BMC 12.25.050.F, 12.27.050.F)	Expanded to all Cannabis Businesses, with no requirements for guards at Manufacturers and Testing Labs. Retailers shall provide Police and nearby residents contact information for the business. Remove hours of operations for Dispensaries. (BMC 12.21.040.H)
	Security	Only for Dispensaries and Cultivators (BMC 12.25.050.E, 12.27.050.E)	Expanded to all Cannabis Businesses, with no requirements for guards and bars on windows at Manufacturers and Testing Labs (BMC 12.21.040.G)

## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing regs (ord)	Proposed regs (ord)
	Sale/consumption of tobacco and alcohol	Not permitted at Dispensaries and Cultivators (BMC 12.27.050.G and 12.25.050.G)	Not permitted at any Cannabis Business (BMC 12.21.040.I)
	Consumption of cannabis by patients	Only for Dispensaries and Cultivators (BMC 12.25.050.G, 12.27.050.G)	Add language about consumption being prohibited in public places. Remove language about smoking prohibition within 50' of Dispensaries (BMC 12.21.040.I, 12.22.040.G)
	Accessibility	All businesses must be accessible; three original businesses not required to comply as long as at original address	Same; add language that expansions of existing businesses must meet ADA requirements (BMC 12.22.040.E)
	Exterior signage	No language about Exterior signage. Signage discouraged for cultivators and dispensaries (BMC 12.25.060, 12.27.060)	Allow for customer-serving retail per other retail requirements; limit to directional signs for non-customer businesses (BMC 12.21.040.J, 12.22.040.F)
	Records/reporting requirements	Dispensaries and cultivators must report financial records to verify taxes, not-for-profit status and 2% to low-income distribution, and convictions (BMC 12.25.090, 12.27.090)	Expanded to all cannabis businesses. Removed reference to not-for-profit status, and reporting of convictions. (BMC 12.21.050)
	Ranking and Allocation	Council may establish a selection process for dispensaries and cultivators (BMC 12.25.100, 12.27.100)	Expanded to all Retailers and Major Cultivators. Minor changes to language. (BMC 12.22.020)
	Confidentiality of information	Only for Cultivators and Dispensaries (BMC 12.25.110, 12.27.110)	Same, but remove language regarding Medical membership records (BMC 12.21.070)
	Authority of City Manager	BMC 12.23.040, 12.25.120, 12.27.150	Added subsection to allow City Manager to require businesses to obtain operating permits from Fire, Toxics and other divisions as necessary to ensure public safety. (BMC 12.21.080, 12.22.160)
	Abatement of violations	BMC 12.23.050, 12.25.130	Same (BMC 12.21.090)

## Existing and Proposed Cannabis Regulations

Topic	Subtopic	Existing regs (ord)	Proposed regs (ord)
	Fees	BMC 12.25.140, 12.27.140	Same (BMC 12.21.100 12.22.150)
	Severability	BMC 12.23.060, 12.25.150, 12.27.160	Same (BMC 12.21.110, 12.22.170)
Other			
	Use tables	N/A	Cannabis uses shown in use tables (Non-Residential District Uses Tables in the ZO)
	Growing in backyards	Patients can grow up to 10 plants in backyard – more if on rooftop or balcony not visible from other properties	Not mentioned, allowed per State law
	Billboards	Not mentioned	Prohibited
	Lounges	Not mentioned	Staff recommends considering the use a Retail (storefront) use, which would need a Retailer license (BMC 12.22.040.G)
	Temporary events	Not mentioned	Prohibited (BMC 12.22.100)
	Residential collectives	Allowed (BMC 12.27.120- 130)	Staff recommends to continue allowing Residential collectives but with additional regulations per the State (BMC 12.22.120-140)
	Taxes	Medical = 2.5% Non-medical = 10%	No recommendation yet
	Selection Process (equity, community benefit requirements, etc.)		No recommendation yet
Not-for-profit		All dispensaries and cultivators must operate on a not for profit basis. (12.25.090.B.1 and 12.27.090.B.1)	Only collectives must operate on a not-for-profit basis. (12.22.130.D)
Operating Permit		The City Manager/Council may authorize regs to administer Chapter (12.25.140 and 12.27.140)	Operating permits for all cannabis businesses may be required by the City Manager (12.21.080.C and 12.22.160.C)

1 **Chapter 23C.25**  
2 **CANNABIS USES**

3 **Sections:**

4 **23C.25.010 Retail Uses**

5 **23C.25.020 Cultivation**

6 **23C.25.030 Manufacturing, Testing and Distribution**  
7

8 **Section 23C.25.010 Retailer**

9 A. Retailer is defined in Section 12.21.020.

10 B. Retailers may not be located within 600 feet of another Retailer or a public or  
11 private elementary, middle or high school.

12 C. Expansion of an approved Retailer shall follow the conversion regulations for the  
13 Zoning District in which it is located and shall comply with subdivision (B) of this  
14 Section.

15 D. An M-Retailer existing and authorized as of January 1, 2010, that does not comply  
16 with this Section, may continue at its current medical cannabis dispensing location and  
17 shall be considered a legal nonconforming use. Notwithstanding Section 23C.04.060 or  
18 subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use  
19 Permit to allow the expansion of a legal nonconforming medical cannabis dispensary  
20 use on any parcel or on two adjacent parcels where a dispensary was located on one of  
21 the parcels as of July 1, 2010.

22 E. No changes in ownership or approved location shall be approved until such time as  
23 the City Council established procedures and criteria to allow such changes.

24 F. Medicinal Cannabis Retailers

25 1. Six Medicinal Cannabis Retailers as defined in Section 12.21.020 shall be  
26 permitted as of right with a Zoning Certificate in C-prefixed zones if they comply  
27 with the parking requirements applicable to the uses they include, and any security  
28 requirements promulgated by the Chief of Police.

29 G. Adult Use Retailers

30 1. Twelve Adult Use Retailers as defined in Section 12.21.020 shall be permitted  
31 as of right with a Zoning Certificate in C-prefixed zones if they comply with the  
32 regulations in BMC Chapter 12.XX, parking requirements applicable to the uses  
33 they include, and any security requirements promulgated by the Chief of Police.

34 H. Delivery-only Retailers

35 1. ALTERNATIVE A: CANNABIS COMMISSION RECOMMENDATION - In  
36 addition to the six existing Medicinal Cannabis Retailers, under Berkeley Municipal  
37 Code Section 12.26.130 and any A-Retailers Dispensaries selected under Section  
38 12.27.100, an unlimited number of Delivery-only Retailers shall be permitted, on a  
39 first-come-first-served basis. OR

40 1. ALTERNATIVE B: STAFF RECOMMENDATION - In addition to the six  
41 existing M-Retailers under Section 12.26.130 and any A-Retailers selected under  
42 Section 12.27.100, ten (10) Delivery-only Retailers shall be permitted, subject to a  
43 Council-approved selection process.

44 2. ALTERNATIVE A: PLANNING COMMISSION RECOMMENDATION  
45 Delivery-only Retailers as defined in Section 12.21.020 shall be allowed subject to  
46 issuance of an (Administrative Use Permit or Use Permit) in all C-prefixed zones  
47 except Commercial Neighborhood (C-N). Delivery-only Retailers must comply  
48 with the regulations in Chapters 12.21 and 12.22 and Title 23, comply with the  
49 parking requirements applicable to retail uses, and any security requirements  
50 promulgated by the Chief of Police.

51 2. ALTERNATIVE B: STAFF RECOMMENDATION Delivery-only Retailers as  
52 defined in Section 12.21.020 shall be allowed in all C-prefixed zones.  
53 Delivery-only businesses are permitted only on second floors. Delivery-only  
54 Retailers must comply with the regulations in Chapters 12.21 and 12.22 and Title  
55 23, comply with the parking requirements applicable to retail uses, and any  
56 security requirements promulgated by the Chief of Police.

57 3. Delivery-Only Retailers may locate in all M-prefixed zones only as an ancillary  
58 use to another type of Cannabis Business.

59 I. No new Retailer may be approved under this Section until the City Council adopts  
60 a licensing process and standards for Retailers. Such standards may include, but shall  
61 not be limited to, whether proposed dispensaries will provide a percentage of all  
62 useable product dispensed at no cost to very low income patients and will provide  
63 product that is produced using organic methods; and whether their form of organization,  
64 ownership and practices ensure equity and accountability, low prices and an adequate  
65 supply of high quality medical cannabis to their members.

66 **Section 23C.25.020 Cannabis Cultivation**

67 A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as  
68 defined in Chapters 12.21 and 12.22 and MAUCRSA, shall be permitted as a matter of  
69 right with a Zoning Certificate in all M-prefixed zones, subject to the following limitations:

- 70 1. Such locations shall be limited to licensed Cannabis Businesses.
- 71 2. Cannabis may not be dispensed, and client, patient or member services or  
72 retail sales are prohibited, at such locations.
- 73 3. No single location used for cultivation and associated uses by a licensee may  
74 exceed 22,000 square feet of total canopy area, except that separate spaces used  
75 by different licensees may be aggregated on the same location.
- 76 4. Up to six Major Cultivation Facilities between the size of 10,000 sf and 22,000  
77 sf in total canopy area are permitted.
- 78 5. There is no numeric limit for Cannabis Cultivation Facilities under 10,000 sf in  
79 total canopy area. These uses are limited by the total area permitted for cannabis  
80 cultivation set forth in subsection 23C.25.020.A.7 minus the area available for  
81 Major Cultivation Facilities.
- 82 6. Outdoor commercial cultivation is prohibited.
- 83 7. The total canopy area used for cannabis cultivation shall not exceed 180,000  
84 square feet. (23E.72.040.A)
- 85 B. Cannabis nurseries, as defined in Chapter 12.21 are considered Cannabis  
86 Cultivation uses and are subject to the same regulations as Cultivators.
- 87 C. Such locations shall comply with all regulations in Chapter 12.XX, security  
88 regulations promulgated by the Chief of Police, and the requirements of this Chapter,  
89 and shall not be located within 300 feet of a private or public elementary, middle or high  
90 school. Such locations may include testing, processing, manufacturing and food  
91 preparation only to the extent expressly permitted by MAUCRSA.
- 92 D. No Cannabis uses may be approved under this Section until the City Council  
93 adopts a licensing process and standards for such uses. Such standards shall include a  
94 requirement that indoor cultivation uses provide for an energy offset through a program  
95 specified by the City to offset the net increased energy that is used by the Facility as  
96 compared to a regular industrial facility, and may include, but shall not be limited to,  
97 whether proposed Facilities will provide a percentage of all usable product cultivated at  
98 no cost to very low income patients and will use organic methods in cultivation and  
99 processing to the maximum extent reasonable; and whether their form of organization,  
100 ownership and practices ensure equity and accountability, low prices and an adequate  
101 supply of high quality cannabis to Customers.

102 **Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution**

- 103 A. Uses such as, but not limited to, testing, processing, and food preparation, that  
104 involve cannabis as defined in Chapter 12.21 but do not involve dispensing, client,

105 patient or member services, or cultivation (other than for testing), shall be evaluated and  
106 regulated under this Title without regard to the fact that they involve cannabis.

107 B. Manufacturers, Testing Labs, and Distribution businesses which are licensed as  
108 Cannabis Businesses by the State may not be located within 300 feet of a public or  
109 private elementary, middle or high school.

110 C. For the purposes of this Chapter, the following Cannabis uses shall be evaluated  
111 and regulated for Zoning purposes in the same way as the existing non-Cannabis uses,  
112 with the exception of distance buffers from schools:

Cannabis Use	Non-Cannabis Use
Manufacturing, processing, food preparation (“Edibles”)	Light Manufacturing
Testing labs	Testing labs
Distribution	Wholesale Uses

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**Changes to Definitions (Chapter 23F.04.010)**

131 **Cannabis Uses:** Cannabis uses include retail sales, cultivation, manufacturing, testing, and  
 132 distributing. See BMC Chapters 12.21 and 12.22 for cannabis regulations and Section 23C.24  
 133 for land use regulations.

134 **Light Manufacturing:** Primarily involved in baking, brewing, fabricating, milling, processing and  
 135 other similar forms of mechanical and chemical treatment. Light manufacturing uses are  
 136 generally in the following groups in the North American Industrial Classification System  
 137 (NAICS):

<b>Light Manufacturing Uses</b>	<b>NAICS Code</b>
Apparel and Other Textile Mill Products	314 – 33636
Electronic and Electric Equipment, except semiconductors	334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999
Fabricated Metal Products	332 – 332999
Food Processing	311 – 311999
Furniture and Fixtures	337 – 33792
Industrial Machinery and Equipment	333 – 333999
Instruments and Related Products	334511 – 334518
Leather and Leather Products, except leather tanning	3162 – 316999
Lumber and Wood Products, except logging	321 – 321999
Miscellaneous Manufacturing	339 – 339999
Paper and Allied Products, except paper, pulp and paperboard mills	3222 – 322299
Perfumes, Cosmetics and Toilet Preparations	325611 – 32562
Printing and Publishing, except publishing without printing	323 – 323122
Rubber and Miscellaneous Plastic Products	326 – 326299
Stone, Clay and Glass Products, except cement	327 – 327215, 32733 –

Light Manufacturing Uses	NAICS Code
	327999
Textile Mill Products	313 – 31332
Transportation Equipment	336 – 336999
<b>Cannabis Manufacturing</b>	

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139 **Retail Products Store:** An establishment engaged in the sales of personal, consumer or  
 140 household items to the customers who will use such items, including, but not limited to:

Retail Products Stores	Comments
Antique Stores	Includes Collectibles
Art/Craft Shops	
Art Galleries	
Art and Craft Supply Stores	
Audio/Video Records, Tapes, Disks Sales Shops	Excludes video rental stores
Automobile Parts Stores	Excludes service of auto parts
Bicycle Shops	Includes sales, parts and repair/service
Bookstores, Periodical Stands	
Clothing Stores	Includes apparel, hats, shoes and accessories
Computer Stores	Hardware and software
Drugstores	Includes pharmaceutical, sundries, cosmetic/personal care items
Fabric, Textile and Sewing Supply Shops	
Flower and Plant Stores	Includes live, fresh-cut and/or dried flowers; excludes nurseries

<b>Retail Products Stores</b>	<b>Comments</b>
Food Products Stores, Specialized	Includes Bakeries
Food Products Stores, General	Includes groceries, markets and supermarkets
Furniture Stores, Household or Office	Includes carpets and rugs
Garden Supply Stores, Nurseries	Does not include Cannabis Nurseries, see Cannabis Cultivation definition in 12.21.020
Gift/Novelty Shops	
Glass Pane and Mirror Stores	
Hobby Shops	
Household Hardware and Housewares Stores	
Household Electronics/Electrical Stores (Audio, Telephone and Video/TV)	Excludes video rental stores
Jewelry/Watch Shops	
Linen Shops	Includes bedding
Musical Instruments and Materials Stores	
Office Supply Stores	
Paint/Wallpaper Stores	
Photography Equipment Supply Stores	Includes cameras and film developing
Secondhand Stores	Includes used/vintage clothing and household goods
Small Appliance Stores	
Sporting Goods Stores	Includes equipment, clothing and supplies, excluding Firearm/Munitions Businesses
Stationery, Cards and Paper Goods Stores	

Retail Products Stores	Comments
Toy Stores	
Variety Stores	

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**Changes to Commercial District and Manufacturing District Use  
Tables (multiple chapters)**

**Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapter 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapter 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapter 12.22

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**Miscellaneous Uses**

Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter <a href="#">23C.10</a> .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP**	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay

Warehouses		
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements of Section <a href="#">23C.17.100</a>
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section <a href="#">23C.17.100</a>

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157 **Table 23E.40.030 C-N Neighborhood Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	AUP	
Over 3,000 s.f.	Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.

Use	Classification	Special Requirements (if any)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	Prohibited  OR  ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

**Commented [IS1]:** We should say 12.21 and 12.22 in all of these places, right?

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160 **Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine	UP(PH)	Includes sale for off-site consumption at restaurants



Use	Classification	Special Requirements (if any)
shops		
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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163 **Table 23E.48.030 C-NS North Shattuck Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer	ZC, AUP or UP	ZC shall only be issued after business is

Use	Classification	Special Requirements (if any)
(Adult-use and Medicinal-use)		approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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168 **Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process

Use	Classification	Special Requirements (if any)
		Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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171 **Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis	ZC	ZC shall only be issued after business is

Use	Classification	Special Requirements (if any)
Retailer		approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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173

174 **Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted**

Use	Classification	Special Requirements (if any)
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	

Use	Classification	Special Requirements (if any)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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176

177 **Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses Permitted**

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 3,500	3,500-7,500	7,500 or more	
<b>Retail Sales</b>				
Retail uses as defined in Sub-title <a href="#">23F</a> , except otherwise listed.				
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH) **	**Except when part of a combination commercial/residential use; see Mixed Use Development heading
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)			Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)			Prohibited on any property devoted to residential use

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Pawn Shops, including Auction Houses	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

178

Miscellaneous Uses		
Automatic Teller Machines	AUP	When not part of a Retail Financial Service
Cafeteria, Employee or Residential	AUP	
Cemeteries and Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	Prohibited in designated nodes. See Section <a href="#">23E.64.050.C</a>
Commercial Excavation	Prohibited	Including earth, gravel, minerals or other building materials including drilling for, or

		removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter <a href="#">23C.10</a> .
Kennels or Pet Boarding	UP(PH)	Prohibited on ground floor in designated node
Laboratories, Commercial Physical or Biological	Prohibited	See Section <a href="#">23E.64.030.C</a>
Laboratories, Testing (including Cannabis Testing)	AUP if less than 10,000 sq. ft. UP(PH) if more than 10,000 sq. ft.	
Mortuaries and Crematories	UP(PH)	
Public Utility Substations, Buildings, Tanks	UP(PH)	Prohibited in designated node. See Section <a href="#">23E.64.050.C</a>
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	Prohibited on ground floor in designated node. See Section <a href="#">23E.64.050.C</a>
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP  UP(PH)	Subject to the requirements and findings of Section <a href="#">23C.17.100</a>  Subject to the requirements and findings of Section <a href="#">23C.17.100</a>
<b>Light Manufacturing and Wholesale Trade Uses</b>		
Manufacturing uses prohibited on ground floors in designated nodes. See Section <a href="#">23E.64.050.C</a>		
Light Manufacturing and Wholesale Trade Uses (including Cannabis Distributors) 5,000 or less sq. ft. 5,000 sq. ft. or more	AUP UP(PH)	
All Other Manufacturing Uses	UP(PH)	
Warehouses or Storage (including Mini-storage Warehouses)	Prohibited	



180

181 **Table 23E.68.030 C-DMU Downtown Mixed Use Commercial District Provisions: Uses**  
 182 **Permitted**

Use	Classification	Special Requirements
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title <a href="#">23F</a> , except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service Exterior Interior	UP(PH) AUP	
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter Up to 60 beds More than 60 beds	ZC UP(PH)	See Chapter <a href="#">23C.10</a> .
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording Studios Broadcast Studios	AUP UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section <a href="#">23C.17.100</a>  Subject to the requirements and findings of Section <a href="#">23C.17.100</a>

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186

187 Table 23E.72.030 M Manufacturing District Provisions: Uses Permitted

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
<b>Manufacturing and Wholesale Trade</b>				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, herbicides and fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP(PH)	UP(PH)	
Semiconductors	UP(PH)			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section <a href="#">23E.72.045.A</a>
Wholesale Trade Establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
<b>Other Industrial Uses</b>				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted.
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	

Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			
Cannabis Cultivation	ZC			ZC shall only be issued after business is approved through the selection process  Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

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189

190 **Table 23E.76.030 MM Mixed Manufacturing District Provisions: Uses Permitted**

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
<b>Manufacturing and Wholesale Trade</b>				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			Changes of Use to Mini Storage Warehouse Prohibited
Pesticides, herbicides and fertilizers	Prohibited			

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP	UP(PH)	
Semiconductors	UP(PH)			
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Wholesale Trade or Warehouse, See Section <a href="#">23E.76.040.D</a>
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
<b>Other Industrial Uses</b>				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted. Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section <a href="#">23E.76.040.D</a>
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section <a href="#">23E.76.040.D</a>
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and	AUP	UP	UP(PH)	

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Commercial Biological Research (including Cannabis Testing)				
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Research and Development	ZC	AUP		
Change of Use from Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section <a href="#">23E.80.045.A2</a> .
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			

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192

193 **Table 23E.80.030 MU-LI Mixed Use-Light Manufacturing District Provisions: Uses**  
 194 **Permitted**

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
<b>Manufacturing and Wholesale Trade</b>				
Increased Permit requirements in locations within 150 ft. of a residential use in either the R or MU-R district. See Section <a href="#">23E.80.060.D</a>				
Construction Products Manufacturing	UP(PH)	UP(PH)	UP(PH)	
Light Manufacturing	ZC	AUP	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, Herbicides and Fertilizers	Prohibited			
Petroleum refining and products	Prohibited			

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Pharmaceuticals	AUP	UP(PH)	UP(PH)	Permitted only in locations at least 500 ft. from R or MU-R Districts; see Section <a href="#">23E.80.060.F</a>
Primary Production manufacturing	Prohibited			
Semiconductors and related devices	Prohibited			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	See Retail Uses for storage of goods for a retail use
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section <a href="#">23E.80.045.A.1</a>
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
<b>Other Industrial Uses</b>				
Art/Craft Studios	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, live/work limited. Section <a href="#">23E.80.030.E</a> . Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section <a href="#">23E.80.045.A.1</a> .
Bus, cab, truck, public utility depots	AUP	UP(PH)	UP(PH)	UP(PH) required if lot is over 20,000 sq. ft. regardless of floor area
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, other building materials, drilling for oil or natural gas
Contractors	AUP	UP(PH)	UP(PH)	Allowed in

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
				Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section <a href="#">23E.80.045.A.1.</a>
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	
Laboratories, Commercial, Physical or Biological using: Class 1 Organisms only Class 2 Organisms  Class 3 Organisms		UP(PH) UP(PH)  Prohibited		Permitted only in locations at least 500 ft. from R or MU-R Districts. See Section <a href="#">23E.80.060</a>
Laboratories, Motion Picture, Photo Processing		UP(PH)		
Laboratories, Testing (including Cannabis Testing)		UP(PH)		
Material Recovery Enterprise		UP(PH)		
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing		UP(PH)		If lot is over 20,000 sq. ft.
Recycling Redemption Center		UP(PH)		If lot is over 20,000 sq. ft.
Repair Service (other than auto repair)	ZC	AUP	UP(PH)	No retail sales permitted
Research and Development	ZC	AUP		
Change of Use From Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section <a href="#">23E.80.045.A.2.</a>
Services to Buildings and Dwellings		AUP		



196

197 **Table 23E.84.030 MU-R Mixed Use-Residential District Provisions: Uses Permitted**

Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Manufacturing and Wholesale Trade		
Manufacturing Uses		
Construction Products Manufacturing	Prohibited	
Light Manufacturing	AUP if 5,000 or less; UP(PH) if more than 5,000	Subject to the finding under Section <a href="#">23E.84.090.K</a> and parking requirements under Section <a href="#">23E.84.080.B</a>
Primary Production Manufacturing	Prohibited	
Warehouses		
Mini-storage Warehouses	Prohibited	
Warehouses or Storage	UP(PH)	See Retail Uses for Storage of Goods for a Retail Use; also see parking requirements under Section <a href="#">23E.84.080.B</a>
Wholesale Trade (including Cannabis Distributors)	AUP if 5,000 or less; UP(PH) if more than 5,000	Subject to parking requirements; see Section <a href="#">23E.84.080.B</a>

198

199

Sections 23E.16.070 and 23E.72.040 will be deleted. Many of the Sections/Subsections will be modified and placed in a new chapter: 23C.25. See comments to determine the new location of information contained within Sections/Subsections.

1

2 **Section 23E.16.070 Medical Cannabis Uses**

3 A. 1. Subject to the licensing requirement of paragraph 3, six medical cannabis  
4 dispensaries as defined in Section 12.26.030 shall be permitted as of right with a  
5 Zoning Certificate in C-prefixed zones if they comply with the parking requirements  
6 applicable to the uses they include, and any security requirements promulgated by  
7 the Chief of Police. When applicable, Zoning Certificates for medical cannabis uses  
8 shall be issued without undue delay and following normal and expedient  
9 consideration of the permit application.

Commented [GE1]: See 23C.25.010.F

10 2. Medical cannabis dispensaries may not be located within 600 feet of another  
11 medical cannabis dispensary or a public or private elementary, middle or high  
12 school. It is the intent of the voters that the Council not adopt buffer zones from  
13 additional uses absent a compelling necessity.

Commented [GE2]: See 23C.25.010.B

14 ~~3. No new medical cannabis dispensary may be approved under this Section until  
15 the City Council adopts a licensing process and standards for medical cannabis  
16 dispensaries. Such standards may include, but shall not be limited to, whether  
17 proposed dispensaries will provide a percentage of all usable product dispensed  
18 at no cost to very low income patients and will provide product that is produced  
19 using organic methods; and whether their form of organization, ownership and  
20 practices ensure equity and accountability, low prices and an adequate supply of  
21 high quality medical cannabis to their members.~~

22 B. A medical cannabis dispensary existing and authorized as of January 1, 2010, that  
23 does not comply with this Section, may continue at its current medical cannabis  
24 dispensing location and shall be considered a legal nonconforming use.  
25 Notwithstanding Section 23C.04.060 or subdivision (A)(2) of this Section, the Zoning  
26 Officer may approve an Administrative Use Permit to allow the expansion of a legal  
27 nonconforming medical cannabis dispensary use on any parcel or on two adjacent  
28 parcels where a dispensary was located on one of the parcels as of July 1, 2010.

Commented [GE3]: See 23C.25.010.D

29 C. Uses such as, but not limited to, testing, processing, and food preparation, that  
30 involve medical cannabis as defined in Chapter 12.26 but do not involve dispensing,  
31 client, patient or member services, or cultivation (other than for testing), shall be  
32 evaluated and regulated under this Title without regard to the fact that they involve  
33 medical cannabis, except that no commercial facility used for medical cannabis food  
34 preparation may be used for the preparation of any other type of food. (Ord.  
35 7501-NS § 1, 2016; Ord. 7161-NS § 6, 2010; Ord. 7068-NS § 4 (part), 12/08/08)

Commented [GE4]: See 23C.25.030.A

36 **Section 23E.72.040 Medical Cannabis Cultivation**

37 A. Notwithstanding anything to the contrary in this Chapter, cultivation of medical  
 38 cannabis as defined in Chapter 12.26, Chapter 12.27 and the State’s Medical  
 39 Marijuana Regulation and Safety Act shall be permitted as a matter of right with a  
 40 Zoning Certificate in the M District, subject to the following limitations:

- 41 1. Such locations shall be limited to licensed medical cannabis organizations.
- 42 2. Medical cannabis may not be dispensed, and client, patient or member services  
 43 are prohibited, at such locations.
- 44 3. No single location used for cultivation and associated uses by a licensee may  
 45 exceed 22,000 square feet, except that separate spaces used by different  
 46 licensees may be aggregated on the same location.
- 47 4. The total area used for medical cannabis cultivation shall not exceed 180,000  
 48 square feet.

Commented [GE5]: See 23C.25.020.A

49 B. Such locations shall comply with security regulations promulgated by the Chief of  
 50 Police, and the requirements of this Chapter, and shall not be located within 600 feet  
 51 of a private or public elementary, middle or high school. Such locations may include  
 52 testing, processing, manufacturing and food preparation, if permitted by the State’s  
 53 Medical Marijuana Regulation and Safety Act.

Commented [GE6]: See 23C.25.020.C

54 C. No medical cannabis uses may be approved under this Section until the City Council  
 55 adopts a licensing process and standards for such uses. Such standards shall  
 56 include a requirement that indoor cultivation uses provide for an energy offset  
 57 through a program specified by the City to offset the net increased energy that is  
 58 used by the facility as compared to a regular industrial facility, and may include, but  
 59 shall not be limited to, whether proposed facilities will provide a percentage of all  
 60 usable product cultivated at no cost to very low income patients and will use organic  
 61 methods in cultivation and processing to the maximum extent reasonable; and  
 62 whether their form of organization, ownership and practices ensure equity and  
 63 accountability, low prices and an adequate supply of high quality medical cannabis  
 64 to their members. (Ord. 7464-NS § 1, 2016: Ord. 7161-NS § 7, 2010)

Commented [GE7]: See 23C.25.020.D