



Office of the City Manager

CONSENT CALENDAR  
December 17, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Planning Director, Planning and Development

Subject: Technical Corrections to the Zoning Ordinance, Amending BMC Sub-Titles  
23A, 23D and 23E

RECOMMENDATION:

Adopt first reading of an Ordinance amending Berkeley Municipal Code Sub-Titles 23A, 23D and 23E to make non-substantive technical corrections to the Zoning Ordinance.

FISCAL IMPACTS OF RECOMMENDATION:

None.

CURRENT SITUATION AND ITS EFFECTS:

Planning staff presented technical amendments to the Berkeley Municipal Code (BMC) to the Planning Commission on February 6 and June 19, 2013. The corrections were passed unanimously for recommendation to Council on June 19 and there were no public comments. These amendments were identified and proposed by staff to update and maintain the BMC. Planning Commission and staff recommend that City Council adopt these minor changes to the ordinance to improve clarity.

BACKGROUND:

Planning staff has identified a number of non-substantive syntax and technical errors that have occurred over time in the Zoning Ordinance. These errors have resulted, in part, from:

- new additions to the code that have rendered certain words, phrases, and/ or sections obsolete;
- references to outmoded plan documents, code chapters, etc.;
- errors during the drafting of zoning language.

This report includes nine revisions to correct and clarify the following sections:

1. 23A.04.030.A, Title, Adoption, and Purposes: Purpose of Ordinance and Relationship to Plans: change reference to 1977 Master Plan to 2002 General Plan; update Downtown Area Plan reference.
2. 23A.16.020, Zoning Maps, Districts, and Boundaries: District Boundaries: change C-2 to C-DMU.

3. 23A.16.030, Zoning Maps, Districts, and Boundaries: District Boundaries: clarify boundaries of zoning districts.
4. 23A.20.030, Zoning Ordinance Amendments: Consideration by the Planning Commission: remove obsolete reference.
5. 23D.20.080.B, R1-A Limited Two-Family Residential District Provisions: Parking-Number of Spaces: syntax correction, "of" to "on".
6. 23D.52.070.E.1; R-SMU Residential Southside Mixed Use District Provisions: Development Standards: clarify footnotes.
7. 23E.80.030; MU-LI Mixed Use-Light Industrial District Provisions: Uses Permitted: add missing permit thresholds.
8. 23E.84.030.C, MU-R Mixed-Use Residential District Provisions: Uses Permitted: correct code reference.
9. 23E.84.090.G, MU-R Mixed Use-Residential District Provisions: Findings: remove unnecessary language.

RATIONALE FOR RECOMMENDATION:

The purpose of the proposed change is to correct technical errors and improve clarity of the Zoning Ordinance. Unclear zoning language negatively impact planners, Berkeley residents, and staff by creating confusion over meaning and interpretation.

ALTERNATIVE ACTIONS CONSIDERED:

None.

CONTACT PERSON

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Attachments:

1: Ordinance

2: Planning Commission Staff reports and attachments, June 19, 2013 and February 6, 2013.

3: Planning Commission Minutes, June 19, 2013 and February 6, 2013.

ORDINANCE NO. -N.S.

TECHNICAL CORRECTIONS TO THE ZONING ORDINANCE, BMC SECTIONS 23A.04.030.A.1, 23A.16.020.A, 23A.16.030, 23A.20.030, 23D.20.080.B, 23D.52.070.E.1, 23E.80.030, 23E.84.030.C, and 23E.84.090.G

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

Section 1. That Berkeley Municipal Code Section 23A.04.030.A is amended to read as follows:

A. Implement the policies of the City's adopted General and Area Plans, including, but not limited to:

1. The City of Berkeley ~~Master Plan (1977)~~ General Plan (2002), as amended;
2. The Berkeley Waterfront Plan (1986);
3. The South Berkeley Area Plan (1988);
4. The Berkeley Downtown Area Plan (1990) (2011);
5. The West Berkeley Area Plan (1993);
6. The University Avenue Strategic Plan (1996);
7. The Southside Plan (2011).

Section 2. That Berkeley Municipal Code Section 23A.16.020.A is amended to read as follows:

A. All property within the City is hereby placed in Zoning Districts, as indicated on the Official Zoning Map, which are listed as follows:

R-1	Single Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside
R-SMU	Residential Southside Mixed Use
C-1	General Commercial

C-N	Neighborhood Commercial
C-E	Elmwood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-W	West Berkeley Commercial
C-DMU <del>2</del>	<del>Central Commercial</del> Downtown Mixed-Use
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial
MU-R	Mixed Use-Residential
SP	Specific Plan
U	Unclassified
(H)	Hillside (Overlay)

Section 3. That Berkeley Municipal Code Section 23A.16.030.A is amended to read as follows:

A. Whenever any uncertainty exists as to any part of ~~any~~ ~~the~~ boundary ~~of any District~~ shown on the Official Zoning Map, the following provisions shall apply:

1. Where boundaries are indicated as approximately following the center line of streets or alleys or the lot lines, such lines shall be construed to be such boundaries;
2. Where a ~~District~~ boundary divides a lot, the location of such boundary, unless indicated by dimensions or legal descriptions, shall be determined by use of the scale appearing on the Official Zoning Map.

Section 4. That Berkeley Municipal Code Section 23A.20.030.B.2 is amended to read as follows:

2. When the land area involved in the proposed reclassification is five (5) acres or more, at least one (1) of the Notices of Public Hearing described above shall be posted at or adjacent to each block front involved, not fewer than fourteen (14) days prior to the date of the hearing; and shall be distributed to all owners of properties, tenants and neighborhood organizations (either by mail or door-to-door distribution); and it shall also be published twice in a newspaper of general circulation in the City, once not fewer than fourteen (14) days prior to the date of the hearing, and once not fewer than seven (7) days prior to the date of the hearing; ~~and it shall be posted at the ten (10) locations specified in Section 1.08.010 of the BMG.~~

Section 5. That Berkeley Municipal Code Section 23D.20.080.B is amended to read as follows:

B. Other Uses requiring Use Permits issued by the Board, including, but not limited to, Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-street Parking Spaces as determined by the Board based [ef.on](#) the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

Section 6. That Berkeley Municipal Code Section 23D.52.070.E is amended to read as follows:

E. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

	Story	Yard location*				Building separation**
		Front*	Rear*	Side	Street side	
Main Buildings with Dwelling Units or Group Living Accommodations or located north of Durant Avenue	1st	10	10	4	6	8
	2nd	10	10	4	8	12
	3rd	10	10	6	10	16
	4th	10	17	8	10	20
	5th	10	19	10	10	24
All other Main Buildings	1st	15	15	4	6	8
	2nd	15	15	4	8	12
	3rd	15	15	6	10	16
	4th	15	17	8	10	20
* Depending on context. See Section 23D.52.070.E.1.						
** See Sections 23D.52.070.E.1, 2 and 3 for yard and building separation reductions.						

Section 7. That the “Uses Incidental to a Permitted Use” portion Table 23E.80.030 in Berkeley Municipal Code Section 23E.80.030.A is amended to read as follows:

Uses Incidental to a Permitted Use				
Amusement Devices	AUP			
Child Care Centers	ZC			Childcare for employees only
	AUP			When providing childcare for non-employees; subject to additional noticing requirements and findings in Section 23E.80.090.I
Food Service Establishment	AUP	Prohibited	Prohibited	
Live Entertainment and/or amplified music	UP(PH)			

Incidental Retail Sales of goods manufactured on site	<b>AUP</b> Up to 1,500 sq. ft.	<b>UP(PH)</b> 1,501 – 3,000 sq. ft.	<b>Prohibited</b> Over 3,000 sq. ft.	See limitations in Section 23E.80.060.C
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Section 8. That Berkeley Municipal Code Section 23E.84.030.C is amended to read as follows:

C. Notwithstanding Section 23E.84.090, the following uses may be established within protected Manufacturing, Wholesale Trade and/or Warehousing space, subject to the permit levels in Section ~~23E.76.030~~ 23E.84.030: Art/Craft Studio, and Contractor Use. The issuance of a Use Permit for Art/Craft Studio and/or Contractor uses under this subdivision shall not result in the removal or elimination of any protections for the prior use in Chapter 23E.84.

Section 9. That Berkeley Municipal Code Section 23E.84.090.G is amended to read as follows:

G. In order to approve a Use Permit for the establishment or expansion of a home occupation with ~~non-resident employees,~~ customer visits, and/or handling of goods, the Zoning Officer or Board must find:

1. The degree of ~~non-resident employment,~~ customer visits, and/or handling of goods, taken as a whole, will not cause a significant detrimental impact on the availability of parking spaces in the location the home occupation is being established;
2. If the proposed home occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the home occupation is being established.

Section 10. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.