

ORDINANCE NO. 7,229–N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 23E.68,
DOWNTOWN MIXED-USE DISTRICT

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

Section 1. That Berkeley Municipal Code Chapter 23E.68, Central Commercial District, be deleted in its entirety and reenacted to read as follows:

**Chapter 23E.68
C-DMU Downtown Mixed Use District Provision**

SECTIONS:

- 23E.68.010 Applicability of Regulations**
- 23E.68.020 Purposes**
- 23E.68.030 Uses Permitted**
- 23E.68.040 Downtown Arts District Overlay**
- 23E.68.050 Construction of New Floor Area: Use Permits**
- 23E.68.060 Use Limitations**
- 23E.68.065 Performance Standards**
- 23E.68.070 Development Standards**
- 23E.68.075. Fee to implement Streets and Open Space Improvement Plan (SOSIP)**
- 23E.68.080 Parking – Number of Spaces**
- 23E.68.085 Green Building Provisions**
- 23E.68.090 Findings**

23E.68.010 Applicability of Regulations

The regulations in this chapter apply in the Downtown Mixed Use District. In addition, the general provisions in Sub-title 23C shall apply.

23E.68.020 Purposes

The purpose of this Chapter is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

23E.68.030 Uses Permitted

- A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH)), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040.

Table 23E.68.030

| Use and Required Permits | | |
|---|-----------------------|--|
| Use | Classification | Special Requirements |
| Retail Sales | | |
| All Retail Sales Uses, except those listed below | ZC | As defined in Sub-title 23F, 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 7,500 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 | |
| Personal and Household Services | | |
| All Personal and Household Services, except those listed below | ZC | As defined in Sub-title 23F, except those otherwise listed (does not include Massage) |
| Laundromats | UP(PH) | |
| Veterinary Clinics | UP(PH) | Including Pet Hospitals |
| Offices | | |
| Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O. | AUP ZC AUP | Within the Arts District Overlay, see Section 23E.68.040 |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents Within the A.D.O. | ZC AUP | Subject to additional requirements; See Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040 |
| Medical Practitioners | ZC | Including Holistic Health and |

Table 23E.68.030

| Use and Required Permits | | |
|--|-----------------------|--|
| Use | Classification | Special Requirements |
| Within the A.D.O. | AUP | Mental Health Practitioners Within the Arts District Overlay, see Section 23E.68.040 |
| Other Professionals and Government, Institutions, Utilities Within the A.D.O. | ZC AUP | Subject to additional requirements; See Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040 |
| Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses | | |
| Adult-Oriented Businesses | UP(PH) | Subject to additional requirements; see Section 23E.16.030 Prohibited on Public Serving Frontages |
| Alcoholic Beverage Service of beer and wine incidental to food service at quick and full service restaurants | AUP | For on-site consumption only |
| Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns | UP(PH) | Includes service of distilled spirits incidental to food service. |
| Amusement Device Arcades | UP(PH) | Subject to additional requirements; see Section 23E.16.050 |
| Commercial Recreation Center | UP(PH) | Subject to additional requirements; see Section 23E.68.060.E |
| Dance, Exercise, Martial Arts and Music Studios | ZC | |
| Entertainment Establishments | UP(PH) | Including Nightclubs |
| Food Service Establishments: | | |

Table 23E.68.030

| Use and Required Permits | | |
|--|-----------------------|--|
| Use | Classification | Special Requirements |
| Carry Out Food Service Stores Under 2,000 s.f. Within the A.D.O. | AUP ZC AUP | Within the Arts District Overlay, see Section 23E.68.040 |
| Quick Service Restaurants Under 2,000 s.f. | AUP ZC | See Alcoholic Beverage Service above |
| Full Service Restaurants Under 2,000 s.f. | AUP ZC | See Alcoholic Beverage Service above |
| Group Class Instruction for Business, Vocational or Other Purposes | ZC | Subject to additional requirements; see Section 23E.68.060.E |
| Gyms and Health Clubs Under 7,500 s.f. | AUP ZC | Subject to additional requirements; see Section 23E.68.060.E |
| Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels | UP(PH) | |
| Motels, Tourist | UP(PH) | |
| Theaters, including Motion Pictures and Stage Performance | AUP | |
| Automobile and Other Vehicle Oriented Uses | | |
| Automobile Parts Stores | Prohibited | |
| Automobile Repair and Service | Prohibited | |
| Automobile Sales and Rentals, and motorcycle stores | UP(PH) | |
| Automobile Washes, Mechanical or Self-Service | Prohibited | |

Table 23E.68.030

| Use and Required Permits | | |
|--|-----------------------|---|
| Use | Classification | Special Requirements |
| Automobile Wrecking Establishments | Prohibited | |
| Gasoline/Automobile Fuel Stations | Prohibited | |
| Recreational Vehicle and Trailers Sales and Rental | Prohibited | Including Boats |
| Tire Sales/Service Stores | Prohibited | |
| Parking, Outdoor and Exterior Service Window Uses | | |
| Activities or Storage Outside of a building: | | |
| When not abutting R-District | AUP | |
| When abutting R-District | UP(PH) | |
| Drive-in uses | Prohibited | |
| Surface Parking Lots: | | |
| Eight (8) or fewer Off-street Parking Spaces | AUP | |
| More than eight (8) Off-street Parking Spaces | Prohibited | |
| Parking Structures | UP(PH) | |
| Recycling Redemption Centers | AUP | |
| Outdoor Café Seating | | Quick and Full-Service Restaurants only |
| When seating not abutting R-District | ZC | |
| When seating abutting R-District | AUP | |
| Combination Commercial/Residential Uses | | |
| Live/Work Units | | |
| Not requiring a UP under | ZC | |

Table 23E.68.030

| Use and Required Permits | | |
|---|-----------------------|---|
| Use | Classification | Special Requirements |
| Chapter 23E.20 | | |
| Requiring a UP under Chapter 23E.20 | UP(PH) | |
| Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial) | UP(PH) | Subject to additional requirements; see Section 23E.68.060.F Subject to Section 23E.68.070 |
| Uses Incidental to a Permitted Use | | |
| Amusement Devices (up to three) | AUP | |
| Food or Beverage for Immediate Consumption | ZC | |
| Live Entertainment Unamplified | ZC | |
| Amplified | AUP | |
| Manufacturing Uses | AUP | |
| Storage of Goods (over 25% of gross floor area) | AUP | |
| Wholesale Activities | AUP | |
| Uses Permitted in Residential Districts | | |
| Accessory Buildings and Structures | As per R-5 District | See Table 23D.44.030 |
| Child Care Centers | AUP | |
| Clubs, Lodges | UP(PH) | |
| Community Centers | UP(PH) | |
| Dwelling Units, including multifamily developments | UP(PH) | Subject to additional requirements; see Section 23E.68.060.F |
| Group Living Accommodations | UP(PH) | Subject to additional requirements; see Section |

Table 23E.68.030

| Use and Required Permits | | |
|--|-----------------------|---|
| Use | Classification | Special Requirements |
| | | 23E.68.060.F |
| Hospitals | UP(PH) | |
| Residential Hotels, including Single Room Occupancy (SRO) Hotels | UP(PH) | Subject to see Section 23E.68.060.F |
| Libraries | UP(PH) | |
| Nursing Homes | UP(PH) | |
| Parks and Playgrounds | ZC | |
| Public Safety and Emergency Services | UP(PH) | |
| Religious Assembly Uses | UP(PH) | |
| Schools, Public or Private | UP(PH) | |
| Senior Congregate Housing: Six or fewer persons Seven or more persons New Construction | ZC AUP UP(PH) | Change of use of an existing dwelling unit Subject to Section 23E.68.070 |
| 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 |

Table 23E.68.030

| Use and Required Permits | | |
|--|-----------------------|--|
| Use | Classification | Special Requirements |
| | | 5% of the subject property area, and located within the main building. |
| Circus or Carnival | UP(PH) | |
| Dry Cleaning and Laundry Plants | UP(PH) | |
| Kennels or Pet Boarding | Prohibited | |
| Laboratories, Testing | AUP | |
| Mortuaries | UP(PH) | |
| Public Utility Substations, Tanks | UP(PH) | |
| Radio, Television or Audio/Sound Recording Studios | AUP | |
| Broadcast Studios | 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 | AUP | Subject to the requirements and findings of Section 23C.17.100 |
| All Other Telecommunication Facilities | UP(PH) | Subject to the requirements and findings of Section 23C.17.100 |
| Legend: | | |
| ZC -- Zoning Certificate AUP -- Administrative Use Permit | | |

| Table 23E.68.030 | | |
|---|-----------------------|-----------------------------|
| Use and Required Permits | | |
| Use | Classification | Special Requirements |
| UP(PH) -- Use Permit, public hearing required | | |

B. The Zoning Officer may approve an Administrative Use Permit for any use that he or she determines is compatible with the purposes of the C-DMU District. Any use that is not listed that is not compatible with the purposes of the C-DMU District shall be prohibited.

23E.68.040 Downtown Arts District Overlay

- A. The City Council finds and declares that:
1. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley’s regional leadership in the arts, and encourage broader economic revitalization of the area.
 2. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City’s plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, full- and quick-service restaurants, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area’s economic vitality.
- B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:
1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and
 2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.

3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.

C. No new carry out food service store or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

23E.68.050 Construction of New Floor Area: Use Permits

Gross floor area of 10,000 square feet or more shall not be created unless a Use Permit is obtained subject to the findings in Section 23E.68.090.D. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor area or Mezzanine levels within or on to existing buildings.

23E.68.060 Use Limitations

A. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00 a.m. except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.

B. Any use that is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.68.030.

C. Any activity or use that occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading in Table 23E.68.030.

D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.

E. For new uses identified in Table 23E.68.030 that are located on the ground floor adjacent to a street frontage, storefront windows are required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.

F. In new buildings constructed on Public Serving Frontages, as illustrated in Subtitle 23F and the Downtown Area Plan, entrances to individual dwelling units and to living quarters in Group Living Accommodations are prohibited on the street-facing side of the street-level floor.

23E.68.065 Performance Standards

Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring

Program adopted concurrently with this Chapter.

23E.68.070 Development Standards

A. The height for Main Buildings shall not exceed the following limits and shall satisfy the following requirements:

| Table 23E.68.070 | | | |
|---|-------------|---------|-------------------------|
| Height Limits (as per Downtown Area Plan) * | | | |
| C-DMU Sub-Area ** | Minimum *** | Maximum | Maximum With Use Permit |
| Core Area† | 50 feet | 60 feet | 75 feet |
| Outer Core† | 40 feet | | |
| Corridor | 40 feet | | |
| Buffer | None | 50 feet | 60 feet |

* Notwithstanding Sub-title 23F, in the case of a roof with parapet walls, building height shall be measured to the top of the roof and parapets may exceed the height limits above by up to five (5) feet as of right.

** See Downtown Area Plan Sub-area map in Figure LU-1 and the Zoning Map.

*** New buildings only, measured to the top of the plate. Theater and Museum Buildings are exempt.

† Within the Core, up to three buildings over 120 feet but not more than 180 feet., Within the Core and Outer Core, up to two buildings over 75 feet but not more than 120 feet. See section 23E.68.070.B.

B. The Board may issue Use Permits for up to five buildings that exceed the limits set forth in Table 23E.68.070 if it makes the finding in Section 23E.68.090.E, and as follows:

1. In the combined Core and Outer Core areas, up to two buildings of over 75 feet but not more than 120 feet.
2. In the Core area, up to three buildings over 120 feet but not more than 180 feet. Allowed uses in such buildings include:
 - a. Two residential buildings with ground-level commercial uses.
 - b. One hotel building with conference facilities and accessory commercial uses.
3. Application process for buildings over 75 feet in height:

- a. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six month intervals until the first application has been submitted. Once the first application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.
- b. An project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and commencement of construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.
- c. Failure of a permittee to strictly comply with the schedule established by the Use Permit shall be grounds for revocation of the Use Permit pursuant to Chapter 23B.60.

C. No yards for main buildings, accessory buildings, or accessory structures shall be required, except as required in Section 23E.04.050 for commercial lots abutting or confronting residential zoning. In addition buildings shall be set back from property lines as set forth in the table and provisions below, unless modified by a Use Permit subject to the findings in Section 23E.68.090.F.

| Portion of Building at Height of: | Front Lot Line | Interior Side Lot Line | | Rear Lot Line |
|-----------------------------------|-------------------------|--------------------------------|----------------------------|---------------|
| | | 65' and less from lot frontage | Over 65' from lot frontage | |
| Zero to 20 feet | 0' minimum, 5' maximum; | 0' minimum | 0' minimum | 0' minimum |
| 21 feet to 75 feet | 0' minimum | 0' minimum | 5' minimum | 5' minimum |
| 76 feet to 120 feet | 15' minimum | 5' minimum | 15' minimum | 15' min. |
| Over 120 feet | 15' minimum | 15' minimum | 15' minimum | 15' min. |

- 1. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.

2. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
3. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
4. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
5. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.

D. New buildings shall provide on-site open space as follows:

1. For residential uses, 80 square feet of usable open space per unit.
 - a. Each square foot of such open space that is provided as Privately-Owned Public Open Space shall be counted as two square feet of required on-site open space for residential uses.
2. For non-residential uses, one (1) square foot of privately-owned public open space per 50 square feet of commercial floor area.
3. In-lieu of providing the open space required by this Section on-site, an applicant may pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP) and/or construct public improvement consistent with the SOSIP, as specified in the Use Permit, provided the Board makes the findings in Section 23E.68.090.G.

23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)

In addition to any other requirement of this Chapter, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as may be adopted by the City.

23E.68.080 Parking – Number of Spaces

- A. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street

parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area.

- B. The District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.

| Use | Number of Parking Spaces Required |
|--|---|
| Dwelling Units, Single and Multi-Family Buildings | One per three dwelling units |
| Hotels and Motels, Tourist (Including Inns, Bed and Breakfast and Hostels) | One per each three guest/sleeping rooms or suites |
| Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes | One per eight sleeping rooms |

1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.
 2. Parking spaces shall be provided on-site, or off-site within 800 feet subject to securing an AUP and in compliance with Section 23E.28.030.
- C. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
- D. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section 23E.68.090.H or modified with an AUP subject to the findings in 23E.28.140.
- E. New construction that results in an on-site total of more than 25 publicly-available parking spaces shall install dynamic signage to Transportation Division specifications, including, but not limited to, real-time garage occupancy signs at the entries and exists to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.
- F. Occupants of residential units or GLA units constructed newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.
- G. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a

Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.

H. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.

1. A pass for unlimited local bus transit service; or
2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

I. For residential structures constructed or converted from a non-residential use that require vehicle parking under Section 23E.68.080.B, required parking spaces shall be designated as vehicle sharing spaces in the amounts specified in the following table. If no parking spaces are provided pursuant to Sections 23E.68.080.D no vehicle sharing spaces shall be required.

| Number of Parking Spaces Required | Minimum Number of Vehicle Sharing Spaces |
|-----------------------------------|--|
| 0 – 10 | 0 |
| 11 – 30 | 1 |
| 30 – 60 | 2 |
| 61 or more | 3, plus one for every additional 60 spaces |

1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

J. For residential structures constructed or converted from a non-residential use subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to issuance of a Certificate of Occupancy the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable requirements of 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner

shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

23E.68.085 Green Building Provisions

- A. Construction of new buildings and additions of more than 20,000 square feet shall attain a LEED Gold rating or higher as defined by the US Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.
- B. Additions of 20,000 square feet or less shall be required to meet all applicable standards of the *Stopwaste Small Commercial Checklist*, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.

23E.68.090 Findings

- A. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board must make the findings required by Section 23B.32.040, as well as the findings required by the following paragraphs of this Section to the extent applicable.
- B. A proposed use or structure must:
 - 1. Be compatible with the purposes of the District; and
 - 2. Be compatible with the surrounding uses and buildings.
- C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new carry out food service store or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:
 - 1. The project meets the purposes of the Arts Overlay District as set forth Section 23E.68.040; and
 - 2. The location, size, type, appearance, and signage of the proposed use will:
 - a. Animate and enhance the pedestrian experience on the street; and
 - b. Be generally open to the public evenings and on weekends, whenever practicable.
- D. In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that:
 - 1. The addition or new building is compatible with the visual character and form of the District; and
 - 2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

- E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.
- F. In order to approve a Use Permit for modification of the set back requirements of 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- G. In-lieu open space.
 - 1. In order to approve a Use Permit under Section 23E.68.070.D for payment of an in-lieu fee, the Board must find that the in-lieu payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
 - 2. In order to approve a Use Permit under Section 23E.68.070.D for construction of public improvements consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP), the Board must find that the public improvements:
 - a. Will be located within the vicinity of the project and are consistent with the SOSIP; and
 - b. The improvements will be coordinated with other on-going or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
 - c. The improvements will be completed prior to issuance of a certificate of occupancy for the project, unless otherwise allowed by the Conditions of Approval.
- H. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.D, which may be reduced to zero, the Board must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.
- I. In order to approve a Use Permit to allow parking spaces to be leased or sold in combination with the proposed affordable housing units under Section 23E.68.080.G, the Board must find that applicant has demonstrated that the combined parking is necessary for the purpose of obtaining financing or meeting other obligations.

Section 2. 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.

At a regular meeting of the Council of the City of Berkeley held on March 20, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: None.

ORDINANCE NO. 7,230–N.S.

ADDING CHAPTER 23B.34 – GREEN PATHWAY

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

Section 1. That a new Chapter 23B.34 is added to the Berkeley Municipal Code to read as follows:

**Chapter 23B.34
GREEN PATHWAY**

- 23B.34.010 Applicability**
- 23B.34.020 Purpose**
- 23B.34.030 Eligibility Determination – Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources**
- 23B.34.040 Voluntary Green Pathway Election - Application**
- 23B.34.050 Requirements Applicable to all Green Pathway Projects**
- 23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels**
- 23B.34.070 Development Standards for All Green Pathway Projects**
- 23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height**
- 23B.34.090 Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height**
- 23B.34.100 Tolling**
- 23B.34.110 Compliance**
- 23B.34.120 City Manager Authority to Issue Regulations**

23B.34.010 Applicability

This Chapter applies only to development projects in the C-DMU district that:

- A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by 14 California Code of Regulations 15064.5.

23B.34.020 Purpose

The purpose of this Chapter is to implement the “Green Pathway” provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that exceed the Green Building requirements applicable in the C-DMU district and confer extraordinary public benefits that could not otherwise be obtained, as specified in this Chapter. More specifically, this Chapter establishes standards and requirements to provide greater clarity regarding the City’s expectations for projects eligible for approval

under these provisions and to ensure they will be designed and developed consistent with the Downtown Area Plan.

23B.34.030 Eligibility Determination – Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit to the City a Request for Determination (“RFD”). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter 3.24.

A. A property owner or authorized agent thereof shall request the Landmarks Preservation Commission (“LPC”) to determine whether the subject property, as well as each adjacent property, is an historical resource under 14 California Code of Regulations 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990);
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent); or
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

B. Processing of RFDs.

1. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City’s consultant at the applicant’s expense. If a property that is the subject of the RFD is not identified on any of the lists in Subdivision (A), the applicant’s assessment may consist of a statement of why the applicant believes the property does not include an historical resource.

3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review.
 4. The LPC shall commence its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Section 3.24.140.
 5. Any of the timelines specified in this Section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this Section, as they may be extended, shall constitute a decision to take no action to designate.
- C. If a property that is the subject of a RFD is not designated within the time limitations set forth in this Section, Chapter 3.24 shall not apply to that property unless and until the earliest of any of the following occurs:
1. The expiration of two (2) years from the date of any final action not to designate the property; or
 2. If an application under this Chapter is submitted within that period, (1) the application is withdrawn or denied; or (2) any entitlement expires, is cancelled or revoked, or for any other reason ceases to have effect.
- D. Decisions by the Landmarks Preservation Commission under this Section shall be subject to appeal as set forth in Section 3.24.300, and certification as set forth in Section 3.24.190.
- E. If a subject property is determined to be an historical resource as defined by 14 California Code of Regulations 15064.5, it shall not be processed as a Green Pathway Project under this Chapter.

23B.34.040 Voluntary Green Pathway Election – Application

- A. The Green Pathway authorized by this Chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.
- B. An application for processing pursuant to the Green Pathway shall include the information otherwise required by this Title for the entitlement sought, as well as:
 1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved; and

2. Proof that the Landmarks Preservation Commission has not taken any action under Section 23B.34.030 to designate the subject property as a structure of merit or landmark under Chapter 3.24.
- C. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of this Title.
- D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter 3.24, Landmarks Preservation Commission.

23B.34.050 Requirements Applicable to all Green Pathway Projects

All projects subject to the Green Pathway shall be subject to the following requirements:

- A. In addition to any other applicable affordable housing mitigation fee or requirement, at least twenty percent (20%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053, of the California Health and Safety Code for the life of the project. As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.
- B. The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.
- C. The applicant shall sign an agreement that no less than thirty percent (30%) of a project's construction workers shall be Berkeley residents.
 1. If insufficient Berkeley residents are available to fulfill the 30% local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).
 2. If insufficient residents are available from the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements.
 3. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30 % local hire requirement by providing the

same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subdivision.

- D. Uses shall comply with the requirements and limitations of Sections 23E.68.030 and 23E.68.060.

23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

In addition to the requirements of Section 23E.34.040, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:

- A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
- B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.
- C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.
- D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section 23E.68.070 and the following additional requirements:

- A. Building Setbacks Within View Corridors: To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet ,must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.
- B. Street Wall Façade: Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less:

1. Smaller modulations may be incorporated within larger volumes;
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
 - a. Window openings, oriel windows, or balconies;
 - b. Awnings, canopies, or entrances;
 - c. Arcades, columns, or pilasters;
 - d. Materials and color; or
 - e. Other architectural features.

C. Shadow Analysis Required for Buildings With Heights Between 60 and 75 Feet: Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

D. Height Restrictions on Green Pathway buildings: Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3 Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

1. 2 mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;
2. 2 buildings, up to 120 feet in height in the Core or Outer Core.

E. To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

- A. Notwithstanding anything to the contrary in this Title, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this

Chapter and the Downtown Design Guidelines. Such projects shall be subject to design review under subdivision B and Chapters 23E.08 and 23E.12.

- B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23B.34.030, the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.
1. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subdivisions A and B of Section 23B.34.030 to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee.
 2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.
- C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review, is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee's action. Design Review appeals shall be limited to design issues.

23B.34.090 Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height

Notwithstanding anything to the contrary in this Title, the Zoning Adjustments Board shall take final action on a Green Pathway project over 75 feet in height or any other

project not processed under 23B.34.080 no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such projects shall receive priority status in order to meet the review milestones set forth in this Section.

23B.34.100 Tolling

Timelines under this Chapter shall be tolled during any proceedings pursuant to Chapter 3.24, relating to a Green Pathway project.

23B.34.110 Compliance

The applicable public benefit requirements of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

23B.34.120 City Manager Authority to Issue Regulations

The City Manager or his/her designee may promulgate rules and regulations pertaining to this Chapter, including, but not limited to, setting and administering gross rents and sale prices for below-market-rate units. These rules and regulations may also specify and require guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this Chapter are secured.

Section 2. Copies of this Ordinance shall be posted for two (2) 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.

At a regular meeting of the Council of the City of Berkeley held on March 20, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: None.

ORDINANCE NO. 7,231–N.S.

AMENDMENTS TO CHAPTER 23F.04, DEFINITIONS, TO INCLUDE THE FOLLOWING TERMS: ENHANCED TRANSIT SERVICES, PRIVATELY-OWNED PUBLIC OPEN SPACE, PUBLIC SERVING FRONTAGES, VEHICLE SHARING, AND VEHICLE SHARING POD

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

Section 1. That Berkeley Municipal Code Section 23F.04.010 be amended to include the following definitions:

Enhanced Transit Service: Enhanced transit service includes any facility that will result in the improved operational performance of bus and/or shuttle service, as well as improvements that will encourage the use of transit and make transit service more compatible with downtown's activities and appearance. Improvements for enhanced transit services include but are not limited to: "complete streets" to enhance pedestrian and bicycle routes to transit; transit signal priority; queue jump lanes and left turn signal phasing; bus shelters and raised bus platforms; bus curb extensions and concrete bus pads; transit pre-pay fare vending machines; bus layover facilities; transit plazas and bus stop amenities; bicycle parking and bicycle rental facilities near transit; and street improvements that mitigate the impact of transit operations on pedestrians and bicyclists.

Privately-Owned Public Open Space: Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access. Such areas may be indoor or enclosed, but shall include natural light in the form of windows, skylights, entryways, or other openings. Such areas shall be clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance. Such areas shall be separated from the grade of the public sidewalk by a height no greater than three vertical feet unless an Administrative Use Permit is obtained.

Public Serving Frontages: As identified in the figure below (and Figure LU-3 of the Downtown Area Plan), lots with frontages on streets where it is desirable to have high levels of foot traffic and visual/physical connections between public and interior spaces.



Vehicle Sharing (which includes “Car Sharing” means a membership based service that:

1. Provides a mobility service that helps meet City goals for alternative transportation in order to enhance mobility options, reduce congestion and promote walking, biking and transit;
2. Is primarily designed for shorter time and shorter distance trips that can function as an extension of the public transportation network;
3. Offers membership to all qualified drivers in the City;
4. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
5. Offers members access to a dispersed network of shared automotive vehicles, available 24 hours per day, 7 days a week, at self-service locations where the vehicles are not attended; and
6. Provides vehicle usage without restriction at hourly and/or per mile rates that are directly proportional to usage and include fuels (gas), insurance, maintenance, and reserved parking when vehicles are not in use.

Vehicle Sharing Pod: Any location reserved for shared vehicles that:

1. Is located in an location approved for off-street parking or municipal parking lot; or
2. Is located on-street in a site designated by the City for this use; and
3. Does not involve more than 5 shared vehicles per vehicle sharing service provider; and

4. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances.

Section 2. 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.

At a regular meeting of the Council of the City of Berkeley held on March 20, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: None.

ORDINANCE NO. 7,232–N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) TITLE 23 (ZONING), OFFICIAL ZONING MAP, TO REZONE PORTIONS OF THE DOWNTOWN AREA PLAN AREA FROM C-1, C-2, C-SA, R-2A AND R-4 TO EITHER C-DMU, C-SA, OR R-3, AND INCLUDE THE FOLLOWING FOUR SUBAREAS WITHIN THE C-DMU DISTRICT: CORE, OUTER CORE, CORRIDOR, AND BUFFER

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

Section 1. That the City Council has certified the Environmental Impact Report that was prepared for these amendments, and has made all required findings pursuant to the California Environmental Quality Act.

Section 2. That these amendments are consistent with and implement the General Plan and the Downtown Area Plan.

Section 3. That the City of Berkeley Zoning Map is amended to rezone portions of the Downtown Area Plan area from C-1, C-2, C-SA, R-2A and R-4 to either C-DMU, C-SA, or R-3 and include the following four subareas within the C-DMU District: Core, Outer core, Corridor, and Buffer, as set forth in Exhibit A.

Section 4. The published zoning map may contain technical inaccuracies or typographical errors. The City of Berkeley may make improvements and/or changes to the map at any time. In the event of a discrepancy between the map and other zoning and site information on record, the site-specific information will prevail over the published zoning map, and the map will be corrected.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 20, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: None.

EXHIBIT A ZONING MAP

PROPOSED C-DMU ZONING DISTRICT & SUBAREAS AND RECLASSIFICATIONS WITHIN THE DAP BOUNDARY

