

ORDINANCE NO. -N.S.

AMENDING BMC CHAPTERS 14.72 (PERMITS), 23A.04 (PURPOSE OF ORDINANCE), 23A.16 (ZONING MAPS), SUB-TITLE 23D (RESIDENTIAL PROVISIONS), 23D.12 (OFF-STREET PARKING - RESIDENTIAL), 23D.36 (R-3 MULTIPLE FAMILY DISTRICT), 23D.40 (R-4 MULTI-FAMILY DISTRICT), 23E.08 (DESIGN REVIEW), 23E.28 (OFF-STREET PARKING – COMMERCIAL), 23E.32 (LOADING SPACE REQUIREMENTS), 23E.56 (C-T TELEGRAPH AVENUE COMMERCIAL DISTRICT), 23E.96 (H HILLSIDE OVERLAY DISTRICT), AND 23F.04 (DEFINITIONS)

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

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C. No permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. ~~In On the newly established C-1 the C -(T)~~ Zoning District, the R-SMU Zoning District, and portions of the R-S Zoning District where no parking is required for residential uses, no residential parking permits will be issued for occupants of residential units created after the effective date of the Southside Plan. The zoning division shall provide a listing of newly-constructed housing units to the Department of Finance.

D. The Department of Finance and the traffic engineering division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.

Section 2. That Berkeley Municipal Code Section 23A.04.030 is amended to read as follows:

23A.04.030 Purpose of Ordinance and Relationship to Plans

The purposes of the Zoning Ordinance are to:

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), as amended;
2. The Berkeley Waterfront Plan (1986);
3. The South Berkeley Area Plan (1988);
4. The Berkeley Downtown Plan (1990);
5. The West Berkeley Area Plan (1993);
6. The University Avenue Strategic Plan (1996);

7. The Southside Plan (2011)

B. Promote and protect the public health, safety, peace, morals, comfort and general welfare by regulating the location and use of land, buildings and structures for residential, commercial, manufacturing and other specified uses to encourage the more appropriate use of land and a compatible and harmonious relationship among land uses.

C. Provide for the appropriate intensity of development of land and buildings by regulating the establishment, density and change of uses and by regulating the construction of buildings and additions and the size and coverage of lots.

D. Provide for adequate light and air by limiting the height, bulk and size of buildings and requiring building yard setbacks from property lines as well as separations between buildings.

E. Provide for adequate usable open space, off-street parking and off-street loading spaces for specified land uses by requiring certain reservations of land and structures for such purposes, and by regulating the number, placement and location of such spaces and areas.

F. Prevent adverse effects of commercial and manufacturing activities by limiting the hours, intensity, presence of outdoor activities and other aspects of land uses and specified special uses; and also limit the number and size of certain establishments in specified Districts.

G. Allow review of major changes in buildings by regulating proposals for their demolition, conversion or relocation.

H. Ensure that the construction and alteration of buildings in non-residential Districts is compatible with the existing neighborhoods by requiring design review to provide for a pleasing Berkeley environment and encourage excellence in design.

I. Protect the City's existing housing stock by regulating the reduction in size, removal, demolition or conversion of dwelling units, group living accommodations and residential hotel rooms.

J. Promote the development of affordable housing for all citizens and in particular for citizens with low and moderate incomes.

K. Incorporate the substantive provisions of the Neighborhood Preservation Ordinance (NPO), a citizen initiative, to the extent permitted by law. (Ord. 6478-NS § 4 (part), 1999)

Section 3. That Berkeley Municipal Code Section 23A.16.020 is amended to read as follows:

23A.16.020 Property Classified in Districts

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-2 Central Commercial

M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial
MU-R	Mixed Use-Residential
SP	Specific Plan
U	Unclassified
(H)	Hillside (Overlay)

B. All portions of the City not specifically included in any other District on the Official Zoning Map are hereby designated and classified as Unclassified or U Districts.

C. For each District, a separate set of provisions shall apply to the properties classified therein, as set forth in the corresponding Chapters of Sub-title 23D or 23E.

D. The use herein of any letter-prefixed designation of a District, including, but not limited to R- (residential), C- (commercial), M- (manufacturing) or MU- (mixed use), without an accompanying number or letter designation, shall include all Districts of the class indicated by the letter designation. (Ord. 6478-NS § 4 (part), 1999)

Section 4. That Berkeley Municipal Code Sub-Title 23D is amended to read as follows:

**Sub-Title 23D
PROVISIONS APPLICABLE IN ALL RESIDENTIAL DISTRICTS**

Chapters:

- 23D.04 LOT AND DEVELOPMENT STANDARDS**
- 23D.08 ACCESSORY BUILDINGS AND STRUCTURES**
- 23D.12 OFF-STREET PARKING REQUIREMENTS**
- 23D.16 R-1 SINGLE FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.20 R-1A LIMITED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.24 ES-R ENVIRONMENTAL SAFETY-RESIDENTIAL DISTRICT PROVISIONS**
- 23D.28 R-2 RESTRICTED TWO-FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.32 R-2A RESTRICTED MULTIPLE-FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.36 R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.40 R-4 MULTI-FAMILY RESIDENTIAL DISTRICT PROVISIONS**
- 23D.44 R-5 HIGH DENSITY RESIDENTIAL DISTRICT PROVISIONS**

23D.48 R-S RESIDENTIAL SOUTHSIDE DISTRICT PROVISIONS
23D.52 R-SMU RESIDENTIAL SOUTHSIDE MIXED USE DISTRICT PROVISIONS

Section 5. That Berkeley Municipal Code Section 23D.12.020 is amended to read as follows:

23D.12.020 Applicability

A. The requirements of this Chapter apply to all uses commenced hereafter, to all buildings and structures hereafter constructed or moved onto a lot in an R- District and to any modifications to existing uses and structures which enlarge or increase capacity, including, but not limited to, adding or creating dwelling units, guest rooms, floor area, seats or employees, except to the extent that provisions in the individual R District provide otherwise.

B. In addition, no building, structure, alteration, fence, landscaping or other site feature may be constructed, erected, planted or allowed to be established that would impede the access of a vehicle to any off-street parking space required under this Ordinance.

C. No Zoning Certificate or Use Permit may be granted and no permit other than a Variance from the requirements of this Chapter, may be issued or approved, for any use, building or structure, unless all requirements of this Chapter are met.

D. In the event a Zoning Certificate is granted, the subsequent use of such building or structure is conditional upon the unqualified continuance, availability and proper maintenance of off-street parking in compliance with this Chapter. (Ord. 6478-NS § 4 (part), 1999)

Section 6. That Berkeley Municipal Code Section 23D.12.090 is amended to read as follows:

23D.12.090 Parking Lot Standards

A. Unless specifically prohibited in an individual R District, parking lots are permitted in any R District only if authorized by a Use Permit, and in compliance with the requirements of this section.

B. No sign of any kind, other than those designating the parking lot name, entrances, exits, or conditions of use, may be erected or maintained.

C. All lighting fixtures must be oriented in a manner to direct the light away from adjacent lots.

D. Suitable wheel bumpers must be provided to protect screening and adjacent property.

E. No commercial repair work or service of any kind may be conducted on the lot.

F. The screening and landscaping of the lot must be in accordance with the provisions set forth in Section 23D.12.080.C.2-3.

G. A durable and dustless surface must be provided and maintained and the lot must be graded to dispose of all surface water.

H. The Board may waive any or all of the above conditions in the case of a temporary parking lot. (Ord. 6478-NS § 4 (part), 1999)

Section 7. That Berkeley Municipal Code Chapter 23D.36 is amended to read as follows:

Chapter 23D.36
R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

23D.36.010 Applicability of Regulations

23D.36.020 Purposes

23D.36.030 Uses Permitted

23D.36.040 Special Provisions: Design Review in Southside Plan Area

~~23D.36.040—050~~ Special Provisions: Development Standards for Accessory Dwelling Units

~~23D.36.050~~ ~~Reserved~~

23D.36.060 Reserved

23D.36.070 Development Standards

23D.36.080 Parking -- Number of Spaces

23D.36.090 Findings

Section 8. That Berkeley Municipal Code Section 23D.36.020 is amended to read as follows:

23D.36.020 Purposes

The purposes of the Multiple Family Residential (R-3) Districts are to:

A. Implement ~~General~~Master Plan policy by encouraging development of relatively high density residential areas;

B. Make available housing for persons who desire both convenience of location and a reasonable amount of Usable Open Space;

C. Protect adjacent properties from unreasonable obstruction of light and air;

D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; and

E. Permit the construction of specialized care and treatment facilities such as Senior Congregate Housing, Nursing Homes and Hospitals when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 9. That Berkeley Municipal Code Section 23D.36.030 is amended to read as follows:

23D.36.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or 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.

Table 23D.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/ Homes		
Changes of Use	ZC	Subject to parking requirements. See Section 23D.36.080.A
New Construction	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-family, subject to R-3 standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.36.070 for restrictions.
Major Residential Additions	AUP	
		See definition in Sub-title F. Denial subject to Section 23D.36.090.B.

Group Living Accommodations, subject to R-3 standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.36.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
<u>When located in R-3 District within the Southside Plan boundaries.</u>	<u>Prohibited</u>	
<u>When located in any other R-3 District</u>	<u>UP(PH)</u>	<u>Subject to Section 23D.12.090</u>
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	ZC	Changes of use from an existing dwelling unit
Seven or more persons	AUP	
New Construction	UP(PH)	
<u>Accessory Uses and Structures</u>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable	AUP	

<p>space and/or exceeds the requirements under Chapter 23D.08</p> <p>When located on a vacant lot without a Main Building</p>	AUP	
Accessory Dwelling Units in compliance with applicable standards	ZC	Subject to Section 23D.36.040
Accessory Dwelling Unit which does not comply with requirements under Section 23D.36.080	AUP	Subject to making applicable findings in Section 23D.36.090
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.36.090.B
Accessory Dwelling Unit which involves meeting the on-site parking requirement with tandem parking (See Section 23D.36.040.F)	AUP	Subject to making applicable findings in Section 23D.36.090.D
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the setbacks in Section 23D.36.070	AUP	In no case shall side or rear setbacks be allowed to be less than four feet, or the front setback to be less than 15 feet. Subject to making the finding in Section 23D.36.090.A
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.36.040.E.2	AUP	Subject to making applicable findings in Section 23D.36.090
Child Care/ Family Day Care		

Small Family Day Care Homes of eight or fewer children	ZC	
Large Family Day Care Homes of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.

Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Legend: ZC -- Zoning Certificate AUP -- Administrative Use Permit UP(PH) -- Use Permit, public hearing required Prohibited -- Use not permitted		

(Ord. 7155-NS § 6, 2010; Ord. 7129-NS § 6, 2010; Ord. 6949-NS § 12 (part), 2006: Ord. 6909-NS § 6 (part), 2006: Ord. 6854-NS § 10 (part), 2005: Ord. 6763-NS § 21 (part), 2003: Ord. 6671-NS § 6, 2001: Ord. 6644-NS § 1, 2001: Ord. 6478-NS § 4 (part), 1999)

Section 10. That Berkeley Municipal Code Section 23D.36.050 is amended to read as follows:

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

A. In R-3 Districts that are located within the Southside Plan boundaries, all Mixed Use and Community and Institutional projects in the areas set forth below shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12:

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

Areas east of Telegraph

The complete blocks bounded by:

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

The partial blocks bounded by:

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

Additional properties as described below:

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

Areas west of Telegraph

The complete blocks bounded by:

- Ellsworth, Haste, Atherton and Channing;
- Atherton, Haste, Fulton and Channing; and
- Dana, Dwight, Ellsworth and Haste.

The partial block bounded by:

- Ellsworth, Dwight, Fulton and Haste, minus the south-west corner extending 180 feet along Fulton and 150 feet along Dwight.

Additional properties as described below:

- The properties within 134.5 feet of the southern right-of-way of Dwight Way, between Ellsworth Street and 378.5 feet east of Dana Street;
- The properties within 135 feet of the southern right-of-way of Dwight Way, between Ellsworth Street and Fulton Street;
- The properties on the north-west corner of Haste and Fulton, extending 90 feet along Fulton and extending 150 feet along Haste; and
- The properties on the south-west corner of Haste and Fulton, extending 135 feet along Fulton and 150 feet along Haste.

23D.36.050 Reserved

Section 11. That Berkeley Municipal Code Section 23D.36.070 is amended to read as follows:

23D.36.070 Development Standards

A. No lot of less than 5,000 square feet may be created.

B. No more than one person who resides in a Group Living Accommodation use shall be allowed for each 350 square feet of lot area. One additional person who resides in a Group Living Accommodation use may also be allowed for any remaining lot area which may be less than 350 square feet, but not less than ~~two hundred~~ 200 square feet in area.

C. Each Main Building shall be limited in height as follows:

	Height limit average (ft.)	Stories limit (number)
Main Building	35	3
All Residential Additions	16*	Not Applicable

* The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 16 feet in average height, up to the district limit.

D. 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:

	Yard location				
Story	Front	Rear*	Side	Street side	Building separation*

1st	15	15	4	6	8
2nd	15	15	4	8	12
3rd	15	15	6	10	16
*See Section 23D.36.070.D.1 and 2 for yard and building separation reductions.					

1. For two or more Main Buildings which contain Dwelling Units, the Rear Yard may be reduced subject to obtaining an Administrative Use Permit.
 2. For two or more Main Buildings which contain Dwelling Units, the required building separation may be reduced subject to obtaining an Administrative Use Permit.
- E. Maximum lot coverage may not exceed the following coverage percentages:

	Lot Coverage Area (%)	
Main Building Height (stories)	Interior and Through Lots	Corner Lots
1 or 2	45	50
3	40	45

1. Lot coverage may be increased for a project in an R-3 District located within the Southside Plan boundaries if an Administrative Use Permit is obtained with one or both of the following findings:

- a. The increase coverage would enable a new rear dwelling on the lot; or
- b. It would enable moving a historic building onto the lot.

F. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 200 square feet; for each person who resides in a Group Living Accommodation use, 90 square feet. (Ord. 6949-NS § 13 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

G. Projects located within the Southside Plan boundaries that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

Section 12. That Berkeley Municipal Code Section 23D.36.080 is amended to read as follows:

23D.36.080 Parking -- Number of Spaces

A. A lot shall contain the following minimum number of Off-street Parking Spaces:

Table 23D.36.080	
Parking Required	
Use	Number of spaces
Dormitories; Fraternity and Sorority Houses; Rooming and Boarding Houses; and Senior Congregate Housing	One per each five residents, plus one for manager
Dwellings, Multiple (fewer than ten)	One per unit (75% less for seniors, see below)
Dwellings, Multiple (Ten or more)	One per 1,000 sq. ft. of gross floor area (75% less for seniors, see below)
Dwellings, One and Two Family	One per unit*
Employees	One per two non-resident employees for a Community Care Facility**
Hospitals	One per each four beds, plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Nursing Homes	One per each five residents, plus one per each three employees
<p>* This also shall include Accessory Dwelling Units. An application for an Accessory Dwelling Unit that does not meet this standard may apply for an administrative use permit to waive this requirement subject to a special finding under Section 23D.36.090.C.</p> <p>**This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence.</p>	

B. Other uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-street

Parking Spaces determined by the Board based on the amount of traffic generated by the particular use and comparable with specified standards for other uses.

C. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required Off-street Parking Spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.

D. Senior Congregate Housing, Hospitals, Nursing Homes, and Schools, when having a total gross floor area exceeding 10,000 square feet, shall satisfy the requirements of Chapter 23E.32 and the following requirements:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area.

2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area ~~of~~ above the first 10,000 square feet. (Ord. 6763-NS § 23 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 13. That Berkeley Municipal Code Section 23D.36.090 is amended to read as follows:

23D.36.090 Findings

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. If the Zoning Officer or Board makes the applicable finding required by the following paragraph of this section then the permit shall be denied.

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.36.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

C. To approve a parking waiver the Zoning Officer or Board must find that additional or new on-site parking would be detrimental, and that the existing parking supply in the immediate neighborhood is adequate, or that other mitigating conditions are present and apply to the property.

D. To approve tandem parking for an Accessory Dwelling Unit, the Zoning Officer or Board must find that additional or new on-site parking consistent with applicable standards would be detrimental due to reduction of open space on the lot, and that the oversight over the parking which will be provided by the resident owner, which is guaranteed by the requirement of owner-occupancy, will mitigate any potential detrimental effects of the tandem parking. (Ord. 6980-NS § 6 (part), 2007; Ord. 6763-NS § 24 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

E. To approve a Permit for a project located within the Southside Area boundaries, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

Section 14. That Berkeley Municipal Code Section 23D.40.030 is amended to read as follows:

23D.40.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each use or 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.

Table 23D.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-4 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	ZC	See Section 23D.40.070 for restrictions.
	AUP	See definition in Sub-title F. Denial subject to Section 23D.40.090.B.
Group Living Accommodations subject to R-4 standards	UP(PH)	
Hospitals	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Hotels	UP(PH)	Subject to parking requirements; see Section 23D.40.080.A. Also subject to Design Review; see Section 23D.40.040
Libraries	UP(PH)	Subject to parking requirements.

		See Section 23D.40.080.A
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A
Offices	UP(PH)	Subject to parking requirements. See Section 23D.40.080.A. Also subject to design review; see Section 23D.40.040. Prohibited in the Dwight Hillside Area; see Section 23D.40.050.
Parking Lots	UP(PH)	Subject to Section 23D.12.090
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)	Changes of use from an existing dwelling unit
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with applicable standards	ZC	Subject to Section 23D.40.060
Accessory Dwelling Unit which	AUP	Subject to making of applicable

does not comply with requirements under Section 23D.40.080		findings set forth in Section 23D.40.090
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.40.090.B
Accessory Dwelling Unit which involves meeting the on-site parking requirement with tandem parking (see Section 23D.40.060.F)	AUP	Subject to making applicable findings set forth in section 23D.40.090.E
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the setbacks in Section 23D.40.070	AUP	In no case shall side or rear setbacks be allowed to be less than four feet, or the front setback to be less than 15 feet. Subject to making the finding in Section 23D.40.090.A
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.40.060.E.2	AUP	Subject to making applicable findings in Section 23D.40.090
Child Care, Family Day Care		
Small Family Day Care Homes of eight or fewer children	ZC	
Large Family Day Care Homes of nine to 14 children	AUP	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact,	AUP	Subject to the requirements of

teaching-related		Section 23C.16.030.A
Moderate Impact	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Legend: ZC -- Zoning Certificate AUP -- Administrative Use Permit	UP(PH) -- Use Permit, public hearing required Prohibited -- Use not permitted	

(Ord. 7155 § 7, 2010; Ord. 7129-NS § 7, 2010; Ord. 6949-NS § 14 (part), 2006: Ord. 6909-NS § 7 (part), 2006: Ord. 6854-NS § 11 (part), 2005: Ord. 6763-NS § 25 (part), 2003: Ord. 6671-NS § 6, 2001: Ord. 6658-NS § 1, (2001): 6644-NS § 1, 2001: Ord. 6478-NS § 4 (part), 1999)

Section 15. That Berkeley Municipal Code Section 23D.40.050 is amended to read as follows:

23D.40.050 ~~Office Uses Prohibited in the Dwight Hillside Area~~RESERVED

~~Office uses shall not be permitted within that portion of the district identified as the Dwight Hillside Area, which is defined as follows:~~

~~Beginning at the intersection of College Avenue and Bancroft Way and extending east along the center of Bancroft Way to the center of Piedmont Avenue to the rear lot line of lots abutting the north side of Bancroft Way and Bancroft Steps to Prospect Avenue, following south to the rear lot line of lots abutting the east side of Prospect Avenue to Hillside Court and extending along the rear lot line of lots abutting Hillside Court, extending along the rear lot line of lots abutting the east side of Hillside Avenue to the center of Dwight Way (private), following west down the center of Dwight Way to Warring Street and extending down the rear lot line of lots abutting the south side of Dwight Way to College Avenue, following the center of College Avenue north to Bancroft Way. (Ord. 6658-N.S. § 2, 2001)~~

Section 16. That Berkeley Municipal Code Section 23E.08.020 is amended to read as follows:

23E.08.020 Applicability

- A. The design review process and the design guidelines apply to the following:
1. Development within all commercial, manufacturing, mixed use and all other non-residential Districts;
 2. All commercial and mixed use projects in the R-4 District;
 3. All commercial, mixed use and community and institutional projects in the R-SMU and R-S Districts; and
 4. All mixed use and community and institutional projects in the R-3 District within the boundaries of the Southside Plan (see 23D.36.050 for area description.)

~~The design review process and the design guidelines apply to development within all areas designated as commercial, manufacturing, mixed use and all other non-residential Districts in this Ordinance and to all commercial and mixed use projects in the R-4 District.~~

B. All projects for which a building or sign permit is required, involving exterior construction or alteration, the removal of public facades or any portion of those facades, or the erection or replacement of signs, are subject to design review.

C. Permits for projects that are subject to design review may not be issued without design review approval, except that they may be issued conditional upon such approval occurring before the issuance of a building permit or for a permit for a sign as set forth in BMC 20.12.010 (the Sign Ordinance).

D. No Zoning Certificate may be approved before approval of design review for such a pending Zoning Certificate application.

E. No building or sign permit may be issued, except in conformance with this Chapter. (Ord. 6478-NS § 4 (part), 1999)

Section 17. That Berkeley Municipal Code Section 23E.28.130 is amended to read as follows:

23E.28.130 Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, ~~and MU~~, and R-SMU Districts

A. No change of use shall be required to meet the off-street parking requirements of either the district or this chapter unless the structure has been expanded to include new floor area or the use is changed to one with a higher numerical parking standard than the district minimum. When the new use has the same or a lower numerical parking standard than the previous use, the new use shall not be required to meet the off-street parking requirements of the district and this chapter.

B. No new floor area shall be created through building expansions, unless it satisfies the parking requirements of the district and this chapter. However, the Zoning Officer may modify the parking requirements for new floor area for expansions of existing buildings with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145.

C. For a change of use of existing floor area where the new use has a higher numerical parking standard than the existing use as listed in the district provisions, the following applies:

1. The new use must provide the incremental difference between the two numerical parking standards, which must meet all other parking requirements.

2. A higher numerical parking standard may be reduced to the district minimum and other parking requirements may be modified with an Administrative Use Permit, subject to the findings in Section 23E.28.140 or 23E.28.145. If the new use requires a Use Permit, the Zoning Adjustments Board shall approve, deny or modify the request, subject to the findings in Section 23E.28.140 or 23E.28.145. If the numerical parking reduction is approved, no additional off-street parking is required. (Ord. 7167-NS § 1, 2011; Ord. 6856-NS § 6 (part), 2005)

Section 18. That Berkeley Municipal Code Section 23E.32.020 is amended to read as follows:

23E.32.020 Off-Street Loading Spaces for Commercial Districts

Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall provide off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of commercial space and one space for each additional 40,000 square feet of gross floor area of commercial space, except to the extent that provisions in the individual Districts provide otherwise. (Ord. 6856-NS § 8 (part), 2005)

Section 19. That Berkeley Municipal Code Section 23E.56.020 is amended to read as follows:

23E.56.020 Purposes

The purposes of the Telegraph Avenue Commercial (C-T) Districts are to:

A. Implement the General Master Plan's designations for Community Shopping and Commercial/Residential Districts in of Avenue Commercial for this area.

B. Implement the Southside Plan's designation for the Telegraph Avenue Commercial Subarea.

BC. Regulate development in the Telegraph Area Commercial District in order to satisfy the needs of the population groups using the District, especially the University population and the surrounding resident population.

DG. Encourage the availability of a variety of goods and services which serve residents in the District and the University population but do not generate a high volume of vehicular traffic.

ED. Allow for uses which maintain the cultural quality of the District giving it its regional appeal without generating substantial vehicular traffic.

FE. Discourage uses which because of size, the type of the products sold, vehicular traffic generated or other considerations, are more appropriately located elsewhere in the City.

GF. Encourage a mix of goods and services which will preclude the dominance of any one type of use and which will produce variations within the same category of uses.

HG. To encourage the establishment and maintenance of uses which will satisfy the needs of all age groups and attract a range of users and interests.

IH. Encourage the creation of additional housing in the District which is affordable, including housing for those who work or study nearby.

JL. Encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the District.

KJ. Encourage mixed commercial and Residential Uses.

L. Encourage the construction of new housing in mixed use development on vacant properties and surface parking lots.

M. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed use development.

N. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.

OK. Encourage the establishment and survival of small, locally-owned businesses, thereby contributing to the vitality and diversity of the District.

PL. Discourage the type of Commercial Use whose establishment will contribute to the displacement of businesses that supply neighboring residents with essential goods and services.

QM. Ensure that new buildings, additions and renovations harmonize with and enhance the unique character of the District.

RN. Provide environmental protection for the residents of mixed residential commercial structures and surrounding residents from such detriments as noise, fumes and litter.

SO. Preserve the ethnic diversity of the resident population and users of the District and of the types of businesses providing ethnically diverse goods and services in the District.

TP. Protect and encourage the development of properties accessible to the disabled for both residential and Commercial Use.

UQ. Discourage uses which are widely available in other shopping Districts throughout the Bay Area and detract from the unique type and mix of goods and services available in the District. (Ord. 6478-NS § 4 (part), 1999)

Section 20. That Berkeley Municipal Code Section 23E.56.030 is amended to read as follows:

23E.56.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or 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. See also Section 23E.56.070.C for restrictions on usage of upper floors.

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
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	Prohibited	Including Liquor Stores and Wine Shops
Department Stores	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
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title F, except those otherwise listed (does not include Massage). Also subject to numerical limitations listed in Table 23E.56.040
Laundromats	AUP*	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Video Tape/Disk Rental Stores	AUP*	
Offices		
Financial Services, Retail (Banks)	AUP*	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents When not located on the ground floor adjacent to street frontage When located on the ground floor adjacent to street frontage	ZC AUP*	<u>Prohibited on upper floors except on Bancroft Way.</u>
Medical Practitioners, including Holistic Health and	UP(PH)	Prohibited on the ground floor adjacent to street frontage <u>and on upper floors</u>

Mental Health Practitioners		except on Bancroft Way. Also subject to parking requirements under Section 23E.56.080
Other Professionals and Government, Institutions, Utilities	UP(PH)	Prohibited on the ground floor adjacent to street frontage <u>and on upper floors except on Bancroft Way.</u>
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Service of distilled alcoholic beverages may be approved for full service restaurants only
Amusement Device Arcades	Prohibited	
Commercial Recreation Center	AUP*	
Dance, Exercise, Martial Arts and Music Studios	AUP*	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments:		Also subject to numerical limitations listed in Table 23E.56.040
Carry Out Food Service Stores	AUP*	
Quick Service Restaurants	AUP*	Subject to parking requirements; see Section 23E.56.080
Full Service	AUP*	

Restaurants		
Group Class Instruction for Business, Vocational or Other Purposes	AUP*	Not allowed on ground floor adjacent to street frontage
Gyms and Health Clubs	AUP*	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	Subject to parking requirements; see Section 23E.56.080
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	UP(PH)	Prohibited on the ground floor adjacent to street frontage
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC	Excluding service of auto parts
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	

Automobile Wrecking Establishments	Prohibited	
Automobile/Motorcycle Parts Service	UP(PH)	
Gasoline/Automobile Fuel Stations	Prohibited	Except when located in a parking structure
Motorcycle Stores	Prohibited	Including Sales and/or Service
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building Not abutting R-District When abutting R-District	AUP* UP(PH)	
Automatic Teller Machines	AUP*	Exterior and when part of a Retail Financial Service
Drive-in Uses	Prohibited	Which provide service to customers in their cars. See definition in Sub-title 23F
Parking Lots	Prohibited	
Parking Lots , Parking Structures	UP(PH)	

Recycling Redemption Centers	AUP*	
Sidewalk Cafe Seating	AUP*	Subject to additional requirements; see Chapter 23E.24
Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	ZC UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.56.070. DE
Uses Incidental to a Permitted Use		
Amusement Devices (up to 3)	AUP*	
Food or Beverage for Immediate Consumption	AUP*	Treated as a food service establishment and subject to numerical limitations in Table 23E.56.040
Live Entertainment	AUP*	
Manufacturing Uses	AUP*	
Storage of Goods (over 25% of gross floor area)	AUP*	
Wholesale Activities	AUP*	
Uses Permitted in Residential Districts		
Accessory Uses and Structures	As per R-3 District	See Table 23D.36.030

Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Allowed above the ground floor only. Standards may be modified under Section 23E.56.070.E <u>Subject to Section 23E.56.070.E.</u>
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Allowed above the ground floor only. Standards may be modified under Section 23E.56.070.E <u>Subject to Section 23E.56.070.E.</u>
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.56.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.56.080
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	ZC	Change of Use from an existing dwelling unit
Seven or more persons	AUP*	
New Construction	UP(PH)	
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	
<u>Circus or Carnival</u>	<u>UP(PH)</u>	
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	Prohibited	

Kennels or Pet Boarding	Prohibited	
Laboratories	Prohibited	Except photographic processing laboratories
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
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	Subject to the requirements and findings of Section 23C.17.100

Legend:

ZC -- Zoning Certificate

AUP -- Administrative Use Permit *

UP(PH) -- Use Permit, public hearing required

Prohibited -- Use not permitted

* For the purposes of the C-T zoning district, uses established by AUP require public notification of a decision within a 300-foot radius of the subject property.

B. Any use not listed that is compatible with the purposes of the C-T District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-T District shall be prohibited. (Ord. 7155-NS § 14, 2010; Ord. 7129-NS § 14, 2010; Ord. 6984-NS § 1 (part), 2007; Ord. 6848-NS § 12 (part), 2005; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1,2, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

Section 21. That Berkeley Municipal Code Section 23E.56.040 is amended to read as follows:

23E.56.040 Special Provisions -- Numerical Limitations

A. The following uses shall be subject to the numerical and size limitations set forth below:

Table 23E.56.040			
Numerical and Size Limitations			
Use	Number limit	Size limit (sq. ft.)	Type of Permit
Barber/Beauty Shops	10	None	Zoning Certificate

Food Service Establishments:			
Carry Out Food Service	19	None	Use Permit
Quick Service Restaurants *	30	1,500	Use Permit
Full Service Restaurants**	<u>29</u> None	None	Use Permit
Gift/Novelty Shops	None	3,000	Zoning Certificate

*Quick Service Restaurants are also limited to a maximum customer seating capacity of 50 seats.

**Full Service Restaurants are not subject to a quota so long as they remain in operation as a Full Service Restaurant. They may not be converted to a Carry Out Food Service or a Quick Service Restaurant unless the project meets the quota regulations.

B. The Board may approve a Use Permit to exceed the limitations in this Section (either numeric limitation or floor area) if it makes the findings under Section 23E.56.090.E. (Ord. 6984-NS § 2 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Section 22. That Berkeley Municipal Code Section 23E.56.070 is amended to read as follows:

23E.56.070 Development Standards*

A. The Floor Area Ratio (FAR) shall not exceed three; except where 100% of the floor area above the second floor is for Residential Use, in which case the FAR shall not exceed three and one-half; and excepting the [Sather Gate Telegraph/Channing](#) Parking Garage.

B. ~~The height for a Main Building shall not exceed the following limits and shall satisfy the following requirements:~~The height for a Main Building shall satisfy the following requirements:

1. The minimum height shall be three stories and 35 feet.
2. The maximum height shall be four stories and 50 feet.
3. The Zoning Board may approve a Use Permit to increase a project's maximum height to five stories and 65 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designed for residential use; and
 - b. The project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.
4. The maximum height of the Telegraph/Channing Garage shall be seven stories and 85 feet.

- C. In all buildings, except those listed below, 100% of the floor area above the ground floor shall be used for Residential Use, except where the second floor is used for Commercial Use as an integral part of the ground floor establishment. In such cases, the second-floor commercial space shall have no entrances or exits that offer access independent of the interior of the ground floor space other than required fire exits, and shall not exceed the ground-floor area.
- a. Buildings located adjacent to Bancroft Way may have offices on upper floors subject to the restrictions and permits listed in Section 23E.56.030.

Building-use	Height (feet)			
	Min.	Max.	Min.	Max.
-				
All, except below	30	50	2	4

Sather Gate Garage	--	85	--	7
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~~1. In all buildings, 100% of the floor area above the ground floor shall be used for Residential Use, except where the second floor is used for Commercial Use as an integral part of the ground floor establishment. In such cases, the second floor commercial space shall have no entrances or exits, other than required fire exits, which offer access independent of the interior of the ground floor space and shall not exceed the ground floor area.~~

CD. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:

~~1. Shade studies shall be required for all proposed buildings exceeding three stories or 40 feet. Based on the findings of the shade study, the fourth or higher story of the building may be required to be set back to minimize shade impacts on adjacent properties or the public right-of-way. The fourth or higher story of any building located on a lot adjacent to Telegraph Avenue, between Bancroft Way and Dwight Way, shall be set back a minimum of ten feet from the Telegraph Avenue street line;~~

2. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply, for additional yard and building feature requirements.

DE. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, including the FAR development standards and off-street parking requirements of Section 23E.56.070 ~~.A and 23E.56.080, respectively~~, the density limitations of the R-3 District, and as follows:

1. Each Mixed Use building shall contain at least 40 square feet of Usable Open Space per Dwelling Unit for the residential use portion, except that no dimension of such open space shall be less than six feet.

2. The Board may approve a Use Permit to increase the density of a Group Living Accommodation use if it makes the following findings:

a. At least 50% of the total building floor area is designated for residential use;

b. The increase in density will not be detrimental to the immediate neighborhood; and

c. The project meets the purposes of the District.

~~EF.~~ Exclusive Residential Uses are not allowed. Dwelling Units and Group Living Accommodations may be allowed, however, above the ground floor only when located in a Mixed Use building. (Ord. 6478-NS § 4 (part), 1999)

G. Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

Section 23. That Berkeley Municipal Code Section 23E.56.080 is amended to read as follows:

23E.56.080 Parking -- Number of Spaces

~~A. The following provisions shall apply to properties within the District which lie between Bancroft Way and Dwight Way, and including those lots which front on Bancroft Way and Dwight Way:~~

~~1.—No Off-street Parking Spaces are shall be required for changes of use, the creation of new commercial gross floor area, or for new Dwelling Units or Group Living Accommodation rooms; however, a higher Transportation Services Fee (TSF) shall be paid for commercial projects as described in Section 23E.56.080.A.3 below, but no fee shall be required for Residential Uses. In addition, no off--street loading spaces are shall be required for new commercial gross floor area.~~

~~2B. Occupants of residential units which have been exempted from the parking requirements by Section 23E.56.080.A.1 above created without parking after the effective date of this subsection, shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Chapter 14.72 of the BMC- (Ordinance No. 5803-N.S. and No. 5908-N.S.).~~

~~, unless Off-street Parking Spaces equivalent to the number that which would have been required under Section 23E.56.080.B has been provided. Also, occupants of units for which required parking has not been provided shall not be entitled to receive parking permits.~~

C. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section 23E.28.140.

~~3.—A TSF shall be paid for each square foot of newly constructed commercial gross floor area in an amount set at three times the basic rate for the District established by City Council Resolution and in accordance with the procedures and purposes of Chapter 23E.28. Seventy-five percent (75%) of this fee shall be deposited into the City's general TSF fund under Section 23E.28.100, and the remaining twenty-five percent (25%) shall be deposited into the Sather Gate Alternative Transportation Fund described in Section 23E.56.080.A.4.~~

~~4.—The Sather Gate Alternative Transportation Fund is hereby established for the deposit of funds from projects in the District. This fund shall be used exclusively for costs incurred to accomplish the following objectives within the District:~~

~~a.—To purchase transit or paratransit passes, coupons, or tickets for a discount to employees and customers;~~

~~b.—For other expenditures to support non-automobile transportation to and from the District;~~

~~c.—To purchase, install and maintain bicycle parking facilities; and~~

~~d.—To purchase, install and maintain improvements which facilitate mobility of disabled persons within the District.~~

~~5.—Notwithstanding the above requirement, proposed uses in this portion of the District which provide off-street parking, either on-site or at another site under the same ownership within a 1,200 foot radius, in an amount equivalent to that which would be required elsewhere in the District, shall only be required to pay the TSF at the normal basic rate established by Council Resolution, not at the rate required by Section 23E.56.080.A.3.~~

D. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted.

6E. No new off-street parking shall be permitted on any lot abutting Telegraph Avenue exclusively, and shall only be permitted on lots abutting other streets where access to the parking is gained from curb cuts existing on July 6, 1989, and subject to obtaining a Use Permit; and such Use Permit shall be subject to the Board making the finding as provided in Section 23E.56.090.D.

B.—The following provisions shall apply to properties within the District which lie between Dwight Way and Parker Street, and including those lots which front on Parker Street:

1.—All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.

2.—The minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area of commercial space. Uses listed in Table 23E.56.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area or changes of use.

Table 23E.56.080	
Parking Required	
Use	Number of spaces
Hotels	One per each three guest/sleeping rooms or suites plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

~~3.—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.~~

~~4.—A TSF shall be paid per square foot of newly constructed gross floor area in an amount set by City Council Resolution and in accordance with the procedures and purposes of Chapter 23E.28. Seventy five percent (75%) of this fee shall be deposited into the City's general TSF fund under Section 23E.28.100, and the remaining twenty five percent (25%) shall be deposited into the Sather Gate Alternative Transportation Fund as described in Section 23E.56.080.A.4.~~

~~5.—Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32.~~

~~C.—Leasing of parking spaces at sites other than the subject site shall not satisfy the requirements of this Section. Providing required parking at another site which is under the same ownership as the subject site and which is also within 1,200 feet of the subject site will satisfy the requirements of this section.~~

~~D.—Any Off-street Parking Spaces provided in excess of the number required by this Ordinance may be removed, subject to obtaining a Use Permit. (Ord. 6856-NS § 17 (part), 2005; Ord. 6478-NS § 4 (part), 1999)~~

Section 24. That Berkeley Municipal Code Section 23E.56.090 is amended to read as follows:

23E.56.090 Findings

A. In order to approve any Use Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make 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;
2. Encourage and maintain the present street frontage of the District, will not interfere with the continuity of retail or compatible service facilities at the ground level and will not interrupt a continuous wall of building facades;

3. Be compatible in design and character with the District and the adjacent residential neighborhoods;

4. Not generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods.

C. No Administrative Use Permit or Use Permit may be granted under Sections 23E.56.060.A or 23E.56.060.B unless the Zoning Officer or Board finds that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the District.

D. No Use Permit shall be granted under Section 23E.56.080.A-4GE, unless the Board finds that traffic from the new parking will not significantly impede pedestrian circulation.

E. The Board, following a public hearing, may grant a Use Permit which authorizes a use which exceeds a limitation set forth in Section 23E.56.040.BA, only if all of the following conditions and findings are met:

1. Granting an exception will result in enhancement of the purposes of the District; and

2. Adverse parking and transportation impacts of the proposed use are negligible or have been mitigated so as not to adversely affect circulation or parking capacity on adjacent streets or in the immediate neighborhood. (Ord. 6984-NS § 5 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

F. To approve a Permit, the Zoning Officer or Board must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

Section 25. That Berkeley Municipal Code Section 23E.96.070 is amended to read as follows:

23E.96.070 Development Standards

A. Building height and yard setbacks in any combined H District shall be as set forth in below. All other development standards, including but not limited to lot size, density, lot coverage, FAR, usable open space and off-street parking spaces, shall be as specified in the underlying Zoning District.

B. The height for main and accessory buildings shall be limited as follows, provided, however, that the limits may be exceeded subject to obtaining an AUP and the required finding under Section 23E.96.090.B. In addition, building heights shall also

be subject to the limitation and exception provisions set forth in Sections 23D.04.020 and 23E.04.020, as the case may be.

1. Main buildings shall be limited in average and maximum height, and in the number of stories in accordance with the following requirements:

Underlying Zoning District	Height limit average (ft.)		Stories limit (number)
	Avg	Max	
R-1, R-1A, R-2, R-2A	28	35	3
R-3, R-4, R-5, <u>R-S</u> C-N, C-NS	35	35	3
All Residential Additions	See district standards or the highest portion of the roof, whichever is more restrictive	20	Not Applicable

2. Notwithstanding the definition of average height in Section 23F.04.010, for residential additions located above the lowest existing story that is partially or fully above grade, is not habitable, and projects beyond the footprint of the habitable portion of the building, the average height of such additions shall be measured from the floor plate of the lowest habitable story. However, the maximum height shall be measured from grade in all cases.

3. Accessory buildings shall be limited to 12 feet in average height and one story, provided, however, that increased height or stories may be allowed subject to obtaining an AUP and making the findings required under Sections 23D.08.010.B and 23E.96.090.B.

C. Main buildings shall be set back from the respective lot lines, and separated between one another, as required by the regulations for the underlying District which is combined with the H District, except that such setbacks and building separations may be reduced subject to obtaining an AUP and making the required finding under Section 23E.96.090.B. In addition, yards and building separation shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.030 or 23E.04.030, as the case may be. (Ord. 6949-NS § 18 (part), 2006: Ord. 6848-NS § 16 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 26. That Berkeley Municipal Code Section 23F.04.010 is amended to read as follows:

23F.04.010 Definitions

Accessory Dwelling Unit: A second unit on a lot which is occupied by one Single Family Dwelling and zoned single family residential (R-1), or a second unit approved under the provisions for Accessory Dwelling Units on a lot which is occupied by one Single Family Dwelling and zoned R-1A, R-2, R-2A, R-3, R-4, ~~or R-5~~, R-S or R-SMU. This term also means second unit for the purposes of Section 65852.2 of the Government Code (the Mello Bill).

Section 27. 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 files at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.