

ADDING BMC CHAPTER 23D.48 (R-S RESIDENTIAL SOUTHSIDE DISTRICT PROVISIONS)

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

Section 1. That Berkeley Municipal Code Chapter 23D.48 is added to read as follows:

**Chapter 23D.48
R-S RESIDENTIAL SOUTHSIDE DISTRICT PROVISIONS**

Sections:

23D.48.010	Applicability of Regulations
23D.48.020	Purposes
23D.48.030	Uses Permitted
23D.48.040	Special Provisions -- Design Review
23D.48.050	Special Provisions: Development Standards for Accessory Dwelling Units
23D.48.060	Reserved
23D.48.070	Development Standards
23D.48.080	Parking -- Number of Spaces
23D.48.090	Findings

23D.48.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-S Districts. In addition, the general provisions in Sub-title 23C shall apply. Where the H District overlays a property so as to be classified R-S(H), the Hillside District provisions of Chapter 23E.96 shall also apply.

23D.48.020 Purposes

The purposes of the Residential Southside (R-S) Districts are to:

- A. Implement General Plan and Southside Plan policy by encouraging relatively high and moderate density, multi-story residential development close to major shopping, transportation and employment centers;
- B. Make housing available for persons who desire a convenient location with relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;
- D. Permit the construction of residential structures, such as apartments, and hotels, which will provide housing opportunities for transient or seasonal residents;
- E. Encourage the construction of new housing on vacant properties and surface parking lots;
- F. Encourage the redevelopment of single-story structures that are not historically significant resources with more dense housing development; and
- G. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.

23D.48.030 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.48.030

Use and Required Permits

Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Clubs, Lodges	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.40.080
Community Centers	UP(PH)	Subject to parking requirements; see Section 23D.48.080.
Dwelling Units, Single-family, Duplex, or Multi-Family, subject to R-S Standards Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	UP(PH) ZC AUP	See Section 23D.48.070 for restrictions. See definition in Sub-title F. Denial subject to Section 23D.48.090.B.
Group Living Accommodations subject to R-S standards	UP(PH)	
Hospitals	Prohibited	
Hotels	UP(PH)	Subject to parking requirements; see Section 23D.48.080
Libraries	UP(PH)	Subject to parking

		requirements. See Section 23D.48.080
Nursing Homes	UP(PH)	Subject to parking requirements. See Section 23D.48.080
Offices	Prohibited	
Parking Lots	Prohibited	
Parking Structures	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		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
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.48.050
Accessory Dwelling Unit which does not comply with requirements under Section	AUP	Subject to making of applicable findings set forth in Section 23D.48.090

23D.40.080		
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.48.090.E
Accessory Dwelling Unit which involves meeting the on-site parking requirement with tandem parking (see Section 23D.48.050.F)	AUP	Subject to making applicable findings set forth in Section 23D.48.090.D
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the setbacks in Section 23D.48.070	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.48.090
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.48.050.E.2	AUP	Subject to making applicable findings in Section 23D.48.090
Child Care, Family Day Care Small Family Day Care Homes of eight or fewer children Large Family Day Care Homes of nine to 14 children	ZC AUP	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Low Impact Moderate Impact, teaching-related	ZC AUP	If the requirements of Section 23C.16.020 are met 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	Prohibited	
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 Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	
Legend: ZC -- Zoning Certificate AUP -- Administrative Use Permit	UP(PH) -- Use Permit, public hearing required Prohibited -- Use not permitted	

23D.48.040 Special Provisions: Development Standards for Accessory Dwelling Units

A. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this section if all requirements of the R-4 District and other applicable requirements are met. The Zoning Officer may approve an AUP for cases not in compliance, as set forth in Section 23D.48.030.

B. Accessory Dwelling Units shall conform to the following standards in all cases:

1. The gross floor area of an Accessory Dwelling Unit shall contain no more than 25% of the gross floor area of the main dwelling in existence prior to the construction of the Accessory Dwelling Unit, except that if the house is less than 1,200 sq. ft., an Accessory Dwelling Unit of 300 sq. ft. will be allowed.

2. The gross floor area of an Accessory Dwelling Unit shall be no less than 300 square feet but no greater than 640 square feet.

3. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.

4. Each application shall be determined to be located on a lot with access from a roadway that meets the fire apparatus access road requirements of the California Fire Code Section 902.2.2.1 (as it may be amended or renumbered from time to time), to be determined prior to either issuance of a Zoning Certificate or approval of an AUP.

5. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found in non-compliance with this requirement.

C. An Accessory Dwelling Unit may be converted from a portion of the floor area of a pre-existing main Dwelling Unit subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

D. An Accessory Dwelling Unit may be created through a building addition to an existing main dwelling subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

2. The subject lot shall have an area not less than 4,500 square feet.

E. An Accessory Dwelling Unit may be created in a new or existing detached Accessory Building subject to the following:

1. The subject lot shall have an area not less than 4,500 square feet.

2. An Accessory Dwelling Unit located in an Accessory Building shall not exceed 12 feet in average height.

3. The detached accessory building shall conform to the setbacks in Section 23D.48.070.C to be allowed by right (with issuance of a Zoning Certificate). Any reduction from the setbacks is subject to review and approval of an Administrative Use Permit, but in no case shall the setbacks be reduced below four feet on side and rear setbacks, or 15 feet on the front setback.

F. Where off-street parking in conformance with Section 23D.48.080 would cause detriment to the property due to reduction of open space on the lot, the Zoning Officer may approve an AUP to allow tandem parking.

23D.48.050 Special Provisions -- Design Review

All Mixed Use and Community and Institutional projects shall be subject to Design Review as set forth in Chapters 23E.08 and 23E.12.

23D.48.060 Reserved

23D.48.070 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 200 square feet in area.
- C. The height for a Main Building shall satisfy the following requirements:
 - 1. The maximum height shall be three stories and 35 feet, except as otherwise provided in paragraph 2 below.
 - 2. The Board may approve a Use Permit to increase a project's height to a maximum height of four stories and 45 feet if it makes both of the following findings:
 - a. At least 50% of the total building floor area is designated for residential use; and
 - b. The project meets the purposes of the District.
- D. The height for a Residential Addition shall satisfy the following requirements:
 - 1. The maximum height shall be 16 feet, except as otherwise provided in paragraph 2 below.
 - 2. 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.
- E. Each Main Building shall be set back from its respective lot lines, and shall be separated from one another, in accordance with the following limits:

Story	Yard location				Building separation*
	Front	Rear*	Side	Street side	
1st	10	10	4	6	8
2nd	10	10	4	8	12
3rd	10	10	6	10	16
4th	10	17	8	10	20

*See Sections 23D.48.070.E.1, 2 and 3 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.
- 3. Front setbacks shall be 10 feet but may be reduced to as little as 0 feet through an Administrative Use Permit with a finding that the smaller setback is appropriate given the setbacks and architectural design of surrounding buildings.

F. Maximum lot coverage may not exceed the following coverage percentages:

Main Building Height (stories)	Lot Coverage Area (%)	
	Interior and Through Lots	Corner Lots

1 or 2	65	70
3	60	65
4	55	60

G. Each lot shall contain the following minimum Usable Open Space area: for each Dwelling Unit, 50 square feet; for each person who resides in a Group Living Accommodation use, 20 square feet.

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

23D.48.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this section and Chapter 23D.12, except as set forth in this Section.

B. The following provisions shall apply to properties within the R-S District:

1. No Off-street Parking Spaces shall be required for new Dwelling Units, Group Living Accommodations rooms, or for Accessory Dwelling Units located within the Car-Free Housing Overlay. The Car-Free Housing Overlay area is as follows:

The complete block bounded by:

- Dana, Haste, Ellsworth and Channing.

The partial blocks bounded by:

- Bowditch, Haste, Telegraph and Channing, minus the portion of the block within 150 feet of Telegraph Avenue;
- Dana, Channing, Ellsworth and Durant, minus the lot abutting the west side of Dana; and
- Ellsworth, Channing, Fulton and Durant, minus the north-west corner with 130 feet of frontage along Fulton and 100 feet of frontage along Durant.

Additional properties as described below:

- The properties abutting the east side of College Avenue between Bancroft Way and Channing Way, and including 2709 Channing Way;
- The properties abutting both sides of Channing between Fulton and Shattuck, except those abutting Shattuck, and also excluding the parcel at 2111 – 2113 Channing;
- The properties abutting the west side of Fulton Street from Channing Way extending north along Fulton 127.5 feet and extending south along Fulton 180 feet; and
- The properties abutting the north side of Haste, beginning 150 feet west of Fulton Street, and extending an additional 200 feet west along Haste.

2. For properties not included in the Car-Free Housing Overlay, and for non-residential uses within the Car-Free Housing Overlay, Off-Street parking requirements shall be determined by the parking requirements of Section 23D.40.080 (R-4).
3. Bicycle parking spaces shall be provided 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.

C. Occupants of residential projects within the Car-Free Housing Overlay area that are constructed without parking after the effective date of this Chapter shall not be entitled to receive

parking permits under the Residential Permit Parking Program (RPP), under Chapter 14.72 of the BMC.

D. 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.

E. Any construction which results in the creation of 10,000 square feet of new or additional non-residential gross floor space shall satisfy the loading space requirements of Chapter 23E.32 as follows:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and
2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet. (Ord. 6763-NS § 27 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

F. 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.

23D.48.090 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. The Zoning Officer or Board must also make any findings required by the following subdivisions to the extent applicable.

B. To approve a Use Permit to reduce existing parking, the Board must find that the parking reduction would be consistent with the purposes of the District, as well as make the findings of Section 23E.28.140.

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 either 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 that will be provided by the resident owner, and which is guaranteed by the requirement for owner-occupancy, will mitigate any potential detrimental effects of the tandem parking.

E. To deny a Use Permit for a major residential addition or residential addition subject to 23D.48.070 the Zoning Officer or Board must find that the addition would unreasonably obstruct sunlight, air or views.

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 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.