DATE: May 21, 2018

TO: Members of the ZORP Ad Hoc Subcommittees

FROM: Alene Pearson, Associate Planner
        Ben Noble, Principal of Ben Noble City and Regional Planning

SUBJECT: May 23, 2018 Meeting Memorandum

On May 23, 2018 the Planning Commission and Zoning Adjustments Board subcommittees for the Zoning Ordinance Revision Project (herein referred to as “subcommittee”) will meet concurrently. This memorandum identifies meeting purpose, introduces meeting materials, and describes requested subcommittee feedback on materials.

Meeting purpose
The purpose of this subcommittee meeting is to:

- Provide subcommittee with a status report of work completed on the Baseline Zoning Ordinance (BZO).
- Share working draft chapters of Division 4 (Permits and Administration) of the BZO.
- Receive feedback on possible adjustments to BZO organization.
- Receive feedback on select BZO “Content Questions”.
- Receive feedback on working list of Potential Phase 2 Amendments to the Zoning Ordinance.

Meeting Materials
The following materials are attached to this memorandum:

1. BZO Annotated Outline. This is provided as reference – no changes have been made since the prior subcommittee meeting.

2. Working Draft Chapters of Division 4 (Permits and Administration) of the BZO. The project team prepared these chapters based on the recommended approach reviewed by the subcommittee at its prior meeting. These chapters are working drafts and will be further revised and refined as work continues on the BZO.
3. **Q&A on Existing Zoning Code.** This document, as requested by the subcommittee, notes project team questions and answers on the existing Zoning Ordinance chapters that relate to permits and administration. Consultant questions are tagged “BN” (shown in blue) and staff responses are tagged “PA” (shown in pink).

4. **Content Questions.** This document provides a set of six questions with supporting materials that discuss ambiguities in the existing Zoning Ordinance.

5. **Potential Phase 2 Amendments.** This document provides a working list of potential substantive Zoning Ordinance amendments to address in Phase 2 of ZORP. Potential amendments relate to permits and administration. Amendments related to other topics will be added as additional BZO chapters are drafted.

**Requested Feedback**

The subcommittee is requested to provide the following feedback:

1. **BZO Organization/Consolidation of Related Content**
   The annotated outline (see Attachment 1) shows the BZO organization presented at the prior meeting. The working draft chapters of Division 4 of the BZO (see Attachment 2) were drafted according to this outline and are provided to the subcommittee for review. As a general question, the subcommittee is asked to provide initial reaction to the new structure. More specifically, do the working draft chapters of Division 4 of the BZO:
   - Organize chapters and sections in a logical and intuitive manner?
   - Eliminate unnecessary repetition?
   - Group related content appropriately?
   - Increase prominence of important rules?

2. **Content Questions**
   As part of the BZO drafting process, the project team documented questions and answers discussed in order to clarify ambiguities in the Zoning Ordinance (see Attachment 3). As a result of this process, the project team identified six issues or “Content Questions” which warrant subcommittee feedback. Content Questions and supporting materials can be found in Attachment 4.

3. **Potential Phase 2 Amendments**
   Staff requests that the subcommittee review the list of Potential Phase 2 Amendments (see Attachment 5) and provide feedback on whether additional potential amendments relating to permits and administration should be added. Note that prioritization of Potential Phase 2 Amendments will occur with feedback from the subcommittee once all the working draft chapters of the BZO have been reviewed.
Attachments

1. BZO Annotated Outline
2. Working Draft Chapters of Division 4 (Permits and Administration) of the BZO
3. Q&A on Existing Zoning Code
4. Content Questions
5. Potential Phase 2 Amendments
## CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)
### ANNOTATED OUTLINE

<table>
<thead>
<tr>
<th>New Chapters</th>
<th>Existing Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>User’s Guide</strong>&lt;br&gt;Describes Zoning Ordinance purpose, content, and how to find the rules that apply to a property. Will focus on needs of homeowners unfamiliar with zoning rules.</td>
<td></td>
</tr>
<tr>
<td><strong>Division 1: General Provisions</strong>&lt;br&gt;Chapter 23.102: Introductory Provisions&lt;br&gt;Includes title, adoption, purpose, relationship with General Plan and specific plans, applicability, compliance required, conflicting provisions, transitional provisions, severability.</td>
<td>23A.04, 23A.12, 23A.24</td>
</tr>
<tr>
<td><strong>Chapter 23.104: Interpreting the Zoning Ordinance</strong>&lt;br&gt;Describes who has the authority to interpret the Zoning Ordinance, general rules for interpretation of language, and procedures for official interpretations.</td>
<td>23A.08</td>
</tr>
<tr>
<td><strong>Chapter 23.106: Rules of Measurement</strong>&lt;br&gt;Consolidates into one chapter rules for measurement, including rules for measuring lot coverage, density, distances, floor area, floor area ratio, height, lot area and dimensions, setbacks, slope.</td>
<td>Throughout Ordinance</td>
</tr>
<tr>
<td><strong>Chapter 23.108: Zoning Districts and Map</strong>&lt;br&gt;Lists all zoning districts and overlays and incorporates Zoning Map by reference.</td>
<td>23A.16</td>
</tr>
<tr>
<td><strong>Division 2: Zoning Districts</strong>&lt;br&gt;Individual chapters for each zoning districts combined into longer chapters of related districts (residential, commercial and mixed use, and west side districts). Eliminates repetition in separate district chapters. Allowed land uses shown in one table in each chapter. Development that is not a use (e.g., fences) is removed from allowed land uses table. Clearly identifies permits required for different types of projects (e.g., AUP for residential additions) and basis for approval or denial. Separate sections with development standards for each district to show standards on two pages with table and diagram. Adds maps showing boundaries of geographic areas with unique standards (e.g., C-W nodes, car-free housing overlay)</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 23.202: Residential Districts</strong>&lt;br&gt;R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU districts. Consolidates repeated provisions applicable to multiple residential districts into one chapter, including addition of bedrooms, permit thresholds for residential additions, height exceptions, setback reductions, usable open space, refuse screening, findings, lot dimensions and configuration.</td>
<td>23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 3D.40, 23D.44, 23D.48, 23D.52</td>
</tr>
</tbody>
</table>
### New Chapters

<table>
<thead>
<tr>
<th>Chapter 23.204: Commercial and Mixed Use Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-C, C-U, C-N, C-E, NS, C-SA, C-T, C-SO districts. Changes name of C-1 to Corridor Commercial (C-C). Moves University Avenue Strategic Plan Overlay standards from C-C, to new University Avenue Commercial (C-U) district. Consolidates standards generally applicable to commercial and mixed-use districts, including permits for new and converted floor area, hours of operation, outdoor activities, height and setback exceptions, residential transitions, design standards, findings.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>23E.68, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 3E.60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.206: West Berkeley Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-W, M, MM, MU-LI, and MU-R districts. Consolidates requirements applicable to all West Berkeley Specific Plan districts, including protected uses, conversions, use limitations, development and performance standards, and findings.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
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<tbody>
<tr>
<td>23E.64, 23E.72, 23E.76, 23E.80, 23E.84</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.208: Special Purpose Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>SP, U districts.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
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</thead>
<tbody>
<tr>
<td>23E.88, 23E.92</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.210: Overlay Zones</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overlay zones that apply to two or more districts go here (Hillside and Civic Center). Overlay zones that apply to one district will remain in the district chapters, and identified and referenced here.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>23E.96, 23E.98</td>
</tr>
</tbody>
</table>

### Division 3: Citywide Provisions

<table>
<thead>
<tr>
<th>Chapter 23.302: Use-Specific Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master Use tables for all districts. Supplemental standards for specific land uses, including accessory uses, bed and breakfast establishments, emergency shelters, home occupations, adult-oriented businesses, alcoholic beverage sales and service, amusement arcades, medical cannabis uses, non-chartered financial institutions, live/work, sidewalk café seating, temporary uses.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.304: General Development Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development standards that apply citywide, including general lot requirement, height limit exceptions, setback reductions, usable open space, screening, accessory structures, (including fences, walls and hot tubs), temporary structures</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>23B.40, 23D.04, 23E.04, 23C.20.010, 23C.20.030, 23D.08</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.306: Accessory Dwelling Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>23D.10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.308: Parking and Loading</th>
</tr>
</thead>
<tbody>
<tr>
<td>All parking provisions consolidated into one chapter.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Existing Chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>23D.12, 23E.28, 23E.32</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.310: Nonconforming Uses and Structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>23C.04</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.312: Demolition and Dwelling Unit Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>23C.08</td>
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</table>

<table>
<thead>
<tr>
<th>Chapter 23.314: Inclusionary Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>23C.12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23.316: Wireless Communication Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>23C.17</td>
</tr>
<tr>
<td>New Chapters</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Division 4: Permits and Administration</strong></td>
</tr>
<tr>
<td>Chapter 23.402: Administrative Responsibility</td>
</tr>
<tr>
<td>Describes roles and responsibility of Zoning Officer, ZAB, and Planning</td>
</tr>
<tr>
<td>Commission in the administration of the Zoning Ordinance. Includes summary</td>
</tr>
<tr>
<td>table of decision-making authority for all permits and approvals.</td>
</tr>
<tr>
<td>Chapter 23.404: Common Permit Requirements</td>
</tr>
<tr>
<td>Describes permit procedures that all apply generally, including application</td>
</tr>
<tr>
<td>filing and review, public notices and hearings, use of conflict resolution</td>
</tr>
<tr>
<td>or mediation service, one percent for public art, effective dates of decisions, performance guarantees, changes to approved projects, time limits and extensions, resubmittals, and compliance and revocation</td>
</tr>
<tr>
<td>Chapter 23.406: Specific Permit Requirements</td>
</tr>
<tr>
<td>Permit requirements unique to specific types of permits (e.g., findings)</td>
</tr>
<tr>
<td>presented as sections within a single chapter. Includes Zoning Conformance</td>
</tr>
<tr>
<td>Review, Administrative Use Permits, Use Permits, Master Use Permits, Design</td>
</tr>
<tr>
<td>Review, Variances, Modification of Development Standards, Reasonable</td>
</tr>
<tr>
<td>Accommodation.</td>
</tr>
<tr>
<td>Chapter 23.408: Green Pathway</td>
</tr>
<tr>
<td>Chapter 23.410: Appeals</td>
</tr>
<tr>
<td>Combines all appeal provisions in one chapter.</td>
</tr>
<tr>
<td>Chapter 23.412: Zoning Code Amendments</td>
</tr>
<tr>
<td>Chapter 23.414: Enforcement</td>
</tr>
<tr>
<td><strong>Division 5: Definitions</strong></td>
</tr>
<tr>
<td>Chapter 23.502: Land Use Definitions</td>
</tr>
<tr>
<td>Definitions for allowed land uses.</td>
</tr>
<tr>
<td>Chapter 23.504: Glossary</td>
</tr>
<tr>
<td>Definition for general terms.</td>
</tr>
</tbody>
</table>
DIVISION 4
PERMITS AND ADMINISTRATION

Chapter 23.402: Administrative Responsibility
23.402.010 – Purpose
23.402.020 – Review and Decision-Making Authority
23.402.030 – Zoning Officer
23.402.040 – Landmarks Preservation Commission
23.402.050 – Design Review Committee
23.402.060 – Zoning Adjustments Board
23.402.070 – Planning Commission
23.402.080 – City Council

Chapter 23.404: Common Permit Requirements
23.404.010 – Purpose and Applicability
23.404.020 – Application Submittal and Review
23.404.030 – Public Notice
23.404.040 – Public Hearings and Decisions
23.404.050 – Post-Decision Provisions
23.404.060 – Permit Modifications
23.404.070 – Permit Revocation

Chapter 23.406: Specific Permit and Approval Requirements
23.406.010 – Purpose
23.406.020 – Administrative Use Permits
23.406.030 – Use Permits
23.406.040 – Variances
23.406.050 – Design Review
23.406.060 – Master Use Permits
23.406.070 – Modification of Development Standards
23.406.080 – Reasonable Accommodation
Chapter 23.408: Green Pathway

23.408.010 – Applicability
23.408.020 – Purpose
23.408.030 – Eligibility Determination
23.408.040 – Green Pathway Application
23.408.050 – General Requirements
23.408.060 – Requirements for Large Buildings and Hotels
23.408.070 – Development Standards
23.408.080 – Streamlined Permitting Process
23.408.090 – Tolling
23.408.100 – Compliance
23.408.110 – City Manager Authority to Issue Regulations

Chapter 23.410: Appeals and Certifications

23.410.010 – Chapter Purpose
23.410.020 – Appeal Subjects and Jurisdiction
23.410.030 – Filing and Processing of Appeals
23.410.040 – Hearing and Decision
23.410.050 – City Council Certifications

Chapter 23.410: Zoning Ordinance Amendments

23.412.010 – Purpose
23.412.020 – Initiation
23.412.030 – Application
23.412.040 – Planning Commission Hearing and Action
23.412.050 – City Council Hearing and Action
23.412.060 – Findings for Approval
23.412.070 – Limitations on Resubmittals after Denial
23.412.080 – Zoning Map Amendments

Chapter 23.414: Nuisance Abatement

23.414.010 – Purpose
23.414.020 – Enforcement Responsibility
23.414.030 – Violations a Misdemeanor
23.414.040 – Nuisances Prohibited
23.414.050 – City Attorney Action
23.414.060 – Abatement Procedures
23.414.070 – Statements of Violations
23.414.080 – Remedies
23.414.090 – Recovery of Costs
23.414.100 – Private Right of Action
23.402 ADMINISTRATIVE RESPONSIBILITY

Sections:
23.402.010 – Purpose
23.402.020 – Review and Decision-Making Authority
23.402.030 – Zoning Officer
23.402.040 – Landmarks Preservation Commission
23.402.050 – Design Review Committee
23.402.060 – Zoning Adjustments Board
23.402.070 – Planning Commission
23.402.080 – City Council

23.402.010 – PURPOSE
This chapter describes City roles and responsibilities in the administration of the Zoning Ordinance.

23.402.020 – REVIEW AND DECISION-MAKING AUTHORITY¹

A. Summary Table. Table 23-402 summarizes the review and decision-making authority of the Zoning Officer, Design Review Committee, Zoning Adjustments Board, Planning Commission, and City Council.

B. Meaning of Notations. Authority roles as noted in Table 23-402-1 mean the following:

1. “Recommend” means the authority reviews and makes a recommendation to a higher decision-making body.

2. “Decision” means the authority has the power to approve, conditionally approve, or deny an application.

3. “Appeal” means the authority has the power to hear an appeal of a decision by a lower review authority.

4. “–” means the authority role has no role in the application.

¹ New summary of review and decision-making authority.
### TABLE 23.402-1: REVIEW AND DECISION-MAKING AUTHORITY

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>Zoning Ordinance Location</th>
<th>Role of Authority</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative Actions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning Ordinance Amendments</td>
<td>23.412</td>
<td>Recommend</td>
<td>–</td>
</tr>
<tr>
<td>Permits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Use Permits</td>
<td>23.406.020</td>
<td>Decision</td>
<td>Appeal</td>
</tr>
<tr>
<td>Use Permits</td>
<td>23.406.030</td>
<td>Recommend</td>
<td>Decision</td>
</tr>
<tr>
<td>Master Use Permits</td>
<td>23.406.040</td>
<td>Recommend</td>
<td>Decision</td>
</tr>
<tr>
<td>Flexibility and Relief</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Variances</td>
<td>23.406.060</td>
<td>Recommend</td>
<td>Decision</td>
</tr>
<tr>
<td>Modifications to Development Standards</td>
<td>23.406.070</td>
<td>Recommend</td>
<td>Decision</td>
</tr>
<tr>
<td>Ministerial Actions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning Certificates</td>
<td>23.406.090</td>
<td>Decision</td>
<td>–</td>
</tr>
</tbody>
</table>

**Note:**

1. Landmarks Preservation Commission approval required for projects that involve landmarks, structures of merit or buildings within a historic district.

2. Either the Zoning Officer or Zoning Adjustments Board takes action on reasonable accommodation applications as described in Section 23.406.080.C.

### 23.402.030 – ZONING OFFICER

**A. Established.** The City Manager shall designate a Planning and Development Department employee to act as the Zoning Officer.²

**B. Responsibilities and Powers.³**

1. The Zoning Officer:

   a. Acts as the Secretary to the Zoning Adjustments Board (ZAB) and the Design Review Committee (DRC); ²

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² Clarifies 23B.12.010.A that the Zoning Officer is a staff member of the Planning and Development Department.

³ Clarifies 23B.12.020, adds other duties as assigned by ZAB, DRC, Planning Commission, and City Council.
b. Determines if land uses, structures, and activities conform with the Zoning Ordinance;

c. Serves as the review authority on applications as shown in Table 23-402-1;

d. Interprets the meaning and applicability of the Zoning Ordinance;

e. Enforces the Zoning Ordinance in accordance with Chapter 23-414 (Enforcement);

f. Issues administrative regulations and procedures for the administration of the Zoning Ordinance;

g. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.040.K (Conflict Resolution and Mediation Service);

h. Requests legal opinions from the City Attorney on legal questions regarding pending applications; and

i. Performs other duties to administer the Zoning Ordinance as assigned by the ZAB, DRC, Planning Commission, and City Council.

2. The Zoning Officer may designate one or more Department staff to perform the duties described in Paragraph 1 above.

C. Duties as Secretary to ZAB and DRC. As Secretary to the ZAB and DRC the Zoning Officer or the Zoning Officer’s designee shall:

1. Present to the ZAB and DRC applications for permits and other requested approvals;

2. Prepare staff reports on applications;

3. Advise the ZAB and DRC on the meaning and applicability of the Zoning Ordinance; and

4. Transmit to the City Attorney requests for legal opinions on pending applications.

23.402.040 – LANDMARKS PRESERVATION COMMISSION

A. Design Review. The Landmarks Preservation Commission (LPC) shall consider Design Review applications for projects that involve landmarks, structures of merit, or buildings within a historic district. The LPC shall either approve, modify, or deny such applications in accordance with Section 23.030 (Design Review).

B. Other Responsibilities and Powers.

1. As provided in Municipal Code Chapter 3.24 (Landmarks Preservation Commission), the LPC shall serve as the review authority for Structural Alteration Permits for designated landmarks, structures of merit, and buildings within a historic district.

2. Municipal Code Chapter 3.24 identifies additional LPC responsibilities and powers which may affect land use and development in the city.
23.402.050 — DESIGN REVIEW COMMITTEE

Potential Phase 2 Amendments:

C-8: ZAB Conduct Design Review. Eliminate the Design Review Committee and shift Design Review authority to ZAB. Increase reliance on staff for Design Review approvals and recommendations.

C-9: Town Architect. Replace the DRC with a new Town Architect to approve staff-level Design Review and make Design Review recommendations to the ZAB.

C-10: Design Review Committee Composition. Modify DRC composition (number of members, qualifications). Revise definition of layperson or require only one layperson.

A. Established. 4 The City shall establish and maintain a Design Review Committee (DRC) to review and approve the design of development projects in accordance with Section 23.030 (Design Review).

B. Composition.5

1. The DRC shall consist of seven members, as follows:
   a. Two members of the Zoning Adjustments Board (ZAB).
   b. One member of the Landmarks Preservation Commission (LPC).
   c. One member of the Civic Arts Commission (CAC).
   d. Three members of the public who are Berkeley residents.

2. Members from boards and commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the ZAB.

3. DRC membership shall include a minimum of two-licensed architects, one licensed landscape architect, and two laypersons (persons who are neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture).

4. The DRC shall elect a chairperson and vice chairperson

C. Responsibilities and Powers.6

1. The DRC shall consider applications for Design Review and either approve, modify or deny such applications in accordance with Section 23.406.050 (Design Review).

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4 Revisions to 23B.08.010.A for clarity and to reflect new Zoning Ordinance organization.
5 Stylistic edits to 23B.08.010.B and C
6 Stylistic edits 23B.08.020B & D, Clarifies that the DRC may provide recommendations for other matters on issues relating to building and site design.
2. The DRC may make a recommendation on other matters upon request by the ZAB, Planning Commission, City Council or other City board or commission. ZAB recommendations shall be limited to issues related to building and site design.

D. Procedures. The DRC shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

23.402.060 – ZONING ADJUSTMENTS BOARD

Potential Phase 2 Amendments:

F-3: ZAB Composition. Add membership requirements for ZAB (e.g., minimum number of architects, landscape architects, etc.)

A. Established. The City shall establish and maintain a Zoning Adjustments Board (ZAB) to administer the Zoning Ordinance as described in this section.

B. Composition.

1. The ZAB shall consist of nine members appointed by the City Council in accordance with Municipal Code Chapter 2.04 (City Council).

2. The ZAB shall elect a chairperson and vice chairperson.

C. Responsibilities and Powers.

1. The ZAB:
   a. Serves as the review authority on applications as shown in Table 23-402-1;
   b. Hears appeals on decisions in accordance with Chapter 23.410 (Appeals);
   c. Modifies previously approved permits in accordance with Section 23.404.250 (Modification of Permits);
   d. Revokes Use Permits and Variances in accordance with Section 23.404.070 (Permit Revocation);
   e. Recommends actions to abate a public nuisance in accordance with Chapter 23.414 (Enforcement);
   f. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.040.K (Conflict Resolution and Mediation Service);

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7 Stylistic edits to 23B.08.020.A
8 Stylistic edits to 23B.04.010.A, first sentence.
9 Stylistic edits to 23B.04.010.B and first sentence of 23B.04.020.A
10 Stylistic edits to 23B.04.020.B
g. Makes recommendations on other matters as requested by the City Council and Planning Commission; and

h. Adopts administrative regulations and procedures for the administration of the Zoning Ordinance.

2. The City Council may assign additional responsibilities to the ZAB as needed in the administration of the Zoning Ordinance.¹¹

D. Procedures.¹² The Board shall adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

23.402.070 – PLANNING COMMISSION¹³

The Planning Commission:

A. Recommends to the City Council amendments to the Zoning Ordinance in accordance with Chapter 3.28 (Planning Commission);

B. Approves revisions to Design Review guidelines and standards as provided in Section 23.406.030 (Design Review); and

C. Performs other duties as provided in Municipal Code Chapter 3.28 (Planning Commission).

23.402.080 – CITY COUNCIL¹⁴

The City Council:

A. Takes action on proposed Zoning Ordinance amendments;

B. Hears appeals on decisions in accordance with Chapter 23.410 (Appeals); and

C. Assumes other responsibilities and take actions on other matters related to the Zoning Ordinance in accordance with the Municipal Code and state and federal laws.

¹¹ New.
¹³ New.
¹⁴ New.
23.404

COMMON PERMIT REQUIREMENTS

Sections:
23.404.010 – Purpose and Applicability
23.404.020 – Application Submittal and Review
23.404.030 – Public Notice
23.404.040 – Public Hearings and Decisions
23.404.050 – Post-Decision Provisions
23.404.060 – Permit Modifications
23.404.070 – Permit Revocation

23.404.010 – PURPOSE AND APPLICABILITY

This chapter establishes requirements that apply to all discretionary permits required by the Zoning Ordinance.

23.404.020 – APPLICATION SUBMITTAL AND REVIEW

Potential Phase 2 Amendments:

A-1 Submittal Materials. Require an application to contain all required information, documents, and materials before the City will accept the application and begin the review process.

A-2 Pre-Application Conference. Codify a pre-application process, either optional or mandatory, for certain projects

A. Application Submittal. Applications for permits required by the Zoning Ordinance shall be submitted to the Department.

B. Application Form and Contents.

1. Applications shall be made in writing on a form provided by the Department.

2. Applications shall identify one person as the applicant.

3. Applications shall be filed with all information and materials required by the Department, including information such as, but not limited to plans, renderings, models, photographs,

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1 Clarifies that 23B.24 and other permit requirements throughout the code apply to all discretionary permits, not just use permits and variances.

2 Clarifies 23B.24.010.A that chapter applies to any approval requiring application (not just “Permits) and that applications are submitted to the Department.

3 Stylistic edits to 23B.24.030A and 23B24.010.B
material samples, reports, studies, and other items necessary to describe existing conditions and the proposed project.

4. All submitted application materials become City property available to the public.

5. The applicant is responsible for the accuracy and completeness of all information submitted to the City.

C. Eligibility for Filing. An application may be filed by:

1. The owner of the subject property.
2. An agent with written authorization to represent the owner.
3. A person under contract or with an exclusive option to purchase the property, with written consent of the current owner.
4. A tenant with written consent of the owner or the owner’s authorized designee.
5. An agency lawfully instituting eminent domain proceedings.

D. Pre-Application Notice Posted by Applicant

1. Prior to submitting an application for a discretionary permit, an applicant shall post a conspicuous notice of the proposed project readily visible from the street adjacent to the property’s primary frontage.

2. The form and contents of the notice shall be specified by the Department.

E. Application Fees.

1. When Required.

   a. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council.

   b. The Department will process an application only if all required fees are paid, unless the City approves a fee waiver in accordance with following Paragraph 2 (Fee Waivers). The Department will not deem an application complete if any required fee remains unpaid.

   c. Application fees are not required when the City is the applicant, or when a fee is waived under any other provision of the Municipal Code.

2. Fee Waivers. In addition to seeking a fee waiver or deferral under other provisions of the Municipal Code, an applicant may request a fee waiver or deferral as follows:

   a. An applicant shall submit to the Department a written request for a fee waiver or deferral prior to submitting the application. The request shall identify the amount of all

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4 Stylistic edits to 23B.24.020A. 23B.24.020B is moved to the home occupation section.
6 Stylistic edits to 23B.24.040A&B
7 Stylistic edits to 23B.24.040.C
Current Planning fees required for the project and describe the reasons why the fee waiver or deferral is necessary.

b. The Director shall forward the request to the City Manager. The City Manager may approve the request upon finding that:
   i. The project will provide a significant public service or benefit, and
   ii. The waiver or deferral is necessary to make the project economically feasible to construct or establish.

c. The City Manager shall notify the City Council of a decision to approve a requested fee waiver or deferral. At its discretion, the City Council may reverse the City Manager’s decision and deny the request.

d. If the request is approved, the applicant shall include with the application a letter from the City Manager authorizing the fee waiver or deferral. The Department will accept the application only if submitted with the City Manager’s letter.

3. Refunds and Withdrawals.\(^8\)
   a. If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee.
   b. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for denied applications.

F. Multiple Permit Applications.\(^9\)

\begin{center}
\textbf{Potential Phase 2 Amendment:}
\end{center}

\begin{center}
\textbf{A-3: Consolidated Review.} Consolidate review authority for projects with permits reviewed by different review authorities. Allow one review authority to act on projects where overlapping decision-making authority currently exists.
\end{center}

\begin{enumerate}
  \item \textbf{Zoning Ordinance Permits.} The following procedures apply to proposed projects that require multiple discretionary permits under the Zoning Ordinance (e.g., Use Permit and Variance).
      \begin{enumerate}
        \item An applicant shall request City approval of all required permits as part of a single application unless waived by the Zoning Officer.
        \item The Department shall process multiple permit applications for the same project concurrently.
      \end{enumerate}
\end{enumerate}

\(^8\) Stylistic edits to 23B.24.040.D
\(^9\) New. Codifies current practice.
c. City action on projects requiring multiple permits shall occur as follows:

i. Concurrently for permits reviewed by the same review authority (e.g., the ZAB concurrently reviews and acts on a Variance and Use Permits required for a project); and

ii. Sequentially for permits reviewed by different review authorities, as necessary (e.g., the City Council approves a Zoning Map amendment prior to ZAB action on a Use Permit).

2. Other Permits.

a. Separate applications are required for permits required by portions of the Municipal Code outside of the Zoning Ordinance. The City will review and act on these applications in a separate but coordinated process from applications required under the Zoning Ordinance.

b. For example, if a project requires both Use Permit approval from ZAB and Structural Alteration Permit (SAP) approval from Landmarks Preservation Commission (LPC), then a separate SAP application is required. SAP applications are processed separately from the Use Permit applications and are scheduled for consideration at a hearing before the LPC.

G. Review for Completeness.10

Potential Phase 2 Amendment:

A-4: Application Deemed Withdrawn. Add an “applications deemed withdrawn” provision by which the City may automatically deem an application withdrawn if an applicant doesn’t pay fees or provide requested information within a specified time period

1. Determination of Completeness. Department staff shall determine whether an application is complete based on the Department application submittal checklist.

2. Request for Additional Information. If it is not complete, the Department shall inform the applicant in writing as to the information and materials needed to complete the application.

3. Record of Date of Complete Application. The Department shall record the date the application is deemed complete.

10 Revises 23B.24.050 to clarify that determination of completeness is based on submittal checklist.
H. **Referrals to Landmarks Preservation Commission.**

1. **List of Applications Provided to LPC.** At every regular Landmarks Preservation Commission (LPC) meeting, the Department shall provide the LPC a list of all pending permit applications.

2. **Properties Placed on Agenda.** All properties included in the pending permit application list shall be placed on the LPC meeting agenda to allow the LPC to begin the historic landmark designation process for a property if appropriate.

I. **Project Evaluation and Staff Reports.**

1. **Staff Evaluation.** The Department shall review all applications to determine if they are complete and if they comply with the Zoning Ordinance, the General Plan, and other applicable City policies and regulations and State laws.

2. **Staff Report.** For all applications requiring review by the ZAB and City Council, the Department shall prepare a staff report describing the proposed project and including, where appropriate, a recommendation to approve, approve with conditions, or deny the application.

3. **Report Distribution.** Staff reports shall be furnished to the applicant and general public after they are provided to the review authority and before action on the application.

J. **Environmental Review.**

1. **CEQA Review.**
   a. After acceptance of a complete application, the Department shall review the project in compliance with the California Environmental Quality Act (CEQA) and any adopted City CEQA guidelines.
   b. The City shall determine the required level of environmental review (e.g., exemption, Negative Declaration) within 30 days for finding the application complete.

2. **Special Studies Required.** Special studies, paid for in advance by the applicant, may be required to supplement the City’s CEQA compliance review.

K. **Summary Denial of Applications.**

1. **Section Purpose.** This section describes the process by which the Zoning Officer may deny an application without notice or hearing (“summary denial”) for property subject to City action to abate a public nuisance or correct a Zoning Ordinance violation.

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11 Stylistic edits to Section 23B.24.030B, first two sentences. Last two sentences moved to public notice sections in chapter.
12 New. Codifies current practice.
13 New. Codifies current practice and CEQA requirements.
14 Stylistic edits to 23B.24.070
2. **Applications Subject to Summary Denial.**
   a. The Zoning Officer may summarily deny an application that would legalize a structure or use subject to a final City order under Chapter 23.414 (Enforcement).
   b. The Zoning Officer shall not summarily deny applications for permits that are necessary to comply with any such order.

3. **Factors to Consider.** When deciding whether to deny such an application, the Zoning Officer shall consider:
   a. Whether the project will be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of the proposed use.
   b. Whether the project will be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
   c. Whether the applicant had an adequate opportunity to submit the application prior to the adoption of a final order under Chapter 23.414 (Enforcement).
   d. The level of permit applied for (i.e., AUP, Use Permit, or Variance). Applications for Variances as a means of legalizing a violation are particularly disfavored.

4. **Hearing Not Required.** A public hearing is not required for the Zoning Officer to summarily deny an application under this section.

5. **Decision is Final.** A decision by the Zoning Officer to summarily deny an application under this section is final and may not be appealed.

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**Potential Phase 2 Amendment:**

A-4.1: **Summary Denial Appeals.** Allow the appeal of a decision to summarily deny an application.

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23.404.030 – **PUBLIC NOTICE**

A. **General.**

1. When the Zoning Ordinance requires public notice of a hearing, meeting, or decision, the Department shall provide notice as described in this section.

2. Public notice requirements are summarized in Table 23.404-1.
TABLE 23.404-1: SUMMARY OF PUBLIC NOTICE REQUIREMENTS

<table>
<thead>
<tr>
<th>Type of Notice</th>
<th>Required For</th>
<th>When Given</th>
<th>Method of Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Administrative Decision</td>
<td>AUP decisions</td>
<td>After decision</td>
<td>Posting and mailing</td>
</tr>
<tr>
<td>Public Hearing Notice</td>
<td>ZAB, Planning Commission, and City Council hearings</td>
<td>14 days prior to hearing</td>
<td>Posting and mailing; newspaper notice for certain Zoning Ordinance Amendments</td>
</tr>
<tr>
<td>Design Review Notice of Decision</td>
<td>Staff-level Design Review decisions</td>
<td>14 days prior to decision</td>
<td>Posting only</td>
</tr>
</tbody>
</table>

B. Types of Notice.

1. **Notice of Administrative Decision.** A Notice of Administrative Decision is required for Zoning Officer decisions on an Administrative Use Permit (AUP).

2. **Public Hearing Notice.** A Public Hearing Notice is required for:
   a. Zoning Adjustment Board (ZAB) hearings on Use Permits, Variances, appeals of AUPs, Zoning Ordinance amendments, and other decisions requiring a public hearing as specified in the Zoning Ordinance.
   b. City Council hearings on Zoning Ordinance amendments, appeals of ZAB decisions, other decisions requiring a public hearing as specified in the Zoning Ordinance.


C. Notice Contents.

1. **All Notices.** All notices shall contain the following information:
   a. A description of the proposed project.
   b. The environmental review status under the California Environmental Quality Act (CEQA).
   c. Directions on how to obtain further information about the proposed project.
   d. The location and times the application may be reviewed by the public.
   e. Instructions to submit written comments on the proposed project.

2. **Specific Types of Notices.** Specific types of notices shall include the following information in addition to the contents required by previous Paragraph 1 (All Notices).
   a. Notices of Administrative Decision shall include:
      i. The Zoning Officer’s decision on the AUP application;
      ii. The procedure and time period in which the decision may be appealed to the Zoning Adjustments Board (ZAB) if applicable; and
iii. The address where appeals may be filed.

b. Public Hearing Notices shall identify the date, location, and time of the hearing.

c. Design Review Notices of Decision shall include:
   
i. Staff’s anticipated decision on the Design Review application;
   
ii. The procedure and time period in which appeals to the Design Review Committee may be made; and
   
iii. The address where such appeals may be filed.

D. Timing of Notice. Notices shall be posted and mailed, if required, as follows:

1. **Notice of Administrative Decision:** After the Zoning Officer’s decision on the AUP.

2. **Public Hearing Notice:** At least 14 days prior to the hearing unless a longer notice period is required by state law. The Department may extend the notice period to a maximum of 30 days for applications of major significance.

3. **Design Review Notice of Decision:** At least 14 days prior to staff decision on Design Review application.

E. Notice Posting. Notice shall be posted in the following manner and as summarized in Table 23.404-2.

<table>
<thead>
<tr>
<th>Table 23.404-2: Summary of Notice Posting Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice Type</td>
</tr>
<tr>
<td>Notice of Administrative Decision</td>
</tr>
<tr>
<td>Public Hearing Notice</td>
</tr>
<tr>
<td>Design Review Notice of Decision</td>
</tr>
</tbody>
</table>

1. **Public Hearing Notice.** A notice of public hearing shall be posted:
   
a. At three visible locations in the vicinity of the subject property;
   
b. At the meeting location\(^{16}\); and
   
c. In the Permit Service Center.\(^{17}\)

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\(^{16}\) Changes Civic Center (Old City Hall) to meeting location.

\(^{17}\) Revises Zoning Permit Counter.
2. **Notice of Administrative Decision.** A Notice of Administrative Decision shall be posted at:
   a. Three visible locations in the vicinity of the subject property; and
   b. The Permit Service Center.\(^\text{18}\)

3. **Design Review Notice of Decision.** A Design Review Notice of Decision shall be posted on or adjacent to the subject property.

4. **Public Hearings for Zoning Ordinance Amendments.**
   a. Notice shall be posted at the meeting location and in the Permit Service Center.
   b. For Zoning Map Amendments affecting an area less than 5 acres, notice shall be posted at three visible locations in the vicinity of the subject property.
   c. For Zoning Map Amendments affecting area 5 acres or more, public notice shall be posted on each street frontage adjacent to the subject property.

F. **Notice Mailing – All Notices.** All notices shall be mailed to the following:
   1. Neighborhood and community organizations with a registered interest in receiving notice of the proposed project (see Section 23.404.110).
   2. The City of Berkeley Central Library.
   3. Any person who has filed a written request for notice.

G. **Notice Mailing Specific Types of Notices.** In addition to the recipients identified in previous Paragraph 1 (All Notices), specific types of notices shall be mailed to the following. Table 23.404-3 summarizes notice mailing requirements.

<table>
<thead>
<tr>
<th>TABLE 23.404-2: SUMMARY OF NOTICE MAILING REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice and Project Type</td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
<tr>
<td><strong>Notice of Administrative Decision</strong></td>
</tr>
<tr>
<td>Projects in or adjacent to a residential district</td>
</tr>
<tr>
<td>Major residential additions in the R-1(H) district</td>
</tr>
<tr>
<td>Other AUP uses as specified in Zoning Code</td>
</tr>
<tr>
<td>All other projects</td>
</tr>
</tbody>
</table>

\(^{18}\) Revises 23B.28.040B which states notice shall be posted “at a bulletin board at the Zoning counter.”
1. **Notices of Administrative Decision.** Notices of Administrative Decision shall be mailed to the following:
   
   a. For projects in or adjacent to a residential district, the owners and residents of the abutting properties.
   
   b. For major residential additions in the R-1(H) districts and certain AUPs in the C-T district, the owners and residents of properties within a 300-foot radius of the subject property.

2. **Public Hearing Notice.** Public hearing notices, excluding notices for Zoning Ordinance Amendment hearings, shall be mailed to the following:
   
   a. The owners and residents of the abutting and confronting properties.
   
   b. For the construction or demolition of one or more dwelling units, all property owners and residents:
      
      i. Within 300 feet on the same street or streets as the proposed project, including the abutting properties to the rear; and
      
      ii. Within a 300-foot radius of the subject property.  

   c. For a relocated building, all property owners and residents within a 300-foot radius of both the existing and proposed new location of the building.

3. **Zoning Ordinance Amendments.**

---

20 Requires both 300-foot measurements instead of the one that provides “adequate coverage” to remove ambiguity.
a. Public hearing notice for all Zoning Ordinance Amendments shall be mailed to:
   i. Neighborhood and community organizations with a registered interest in receiving notice of the proposed project (see Section 23.404.110).
   ii. The City of Berkeley Central Library.
   iii. Any person who has filed a written request for notice.

b. Notice for all Zoning Ordinance Map amendments shall be mailed to all owners, residents, and tenants within the subject property.

c. Notice for Zoning Ordinance Map amendments affecting an area less than 5 acres shall also be mailed to all property owners, residents, and tenants within 300 feet of any part of the subject property.  

4. Additional Notice. The Zoning Officer, ZAB, or City Council may include a larger area to receive a mailed notice when deemed appropriate.

5. Master Use Permit. For a Master Use Permit application, all businesses, residents, and property owners within 500 feet of the subject property shall receive a notice in addition to the notice recipients listed in previous Paragraph F.1 (Minimum Requirement).

H. Registry of Organizations to Receive Notice.

1. The Department shall maintain a registry of neighborhood and community organizations to receive notices of public hearings and administrative decisions.

2. An organization shall be included in the registry if they submit a written request to the Department with the following information:
   a. The name and address of the organization.
   b. The names, addresses and phone numbers of the contact persons.
   c. The geographic area of interest, shown on a map, for which notices will be sent to the organization.

3. It is the responsibility of the organization to inform the Department of any changes to the organization information identified in previous Subsection B (Request to Be Included).

I. Newspaper Publication – Zoning Ordinance Amendments. Notice of a Zoning Ordinance Text Amendment and Zoning Map Amendments affecting an area of 5 acres or more shall be published in a newspaper of general circulation in the city:

1. At least 14 days before the hearing; and then again

---

21 Adds neighborhood organization, Berkeley Central Library, Persons who have requested notice.
22 23B.36.040.B
23 Stylistic edits to 23B.24.060.
2. At least 7 days before the hearing.

J. Design Review Committee Meetings

1. Meeting Agenda. Agendas for Design Review Committee (DRC) meetings shall be posted at the meeting location at least 72 hours before the meeting. The agenda must list all projects and discussion items to be considered at that DRC meeting.

2. Posting and Mailing Notice Not Required. There is no requirement to mail notices or post a notice on a subject property in advance of the DRC meeting.

K. Additional Notice. The Zoning Officer, Planning Commission, and City Council may require additional public notice as determined necessary or desirable.

L. Failure to Receive Notice. The validity of the hearing shall not be affected by the failure of any property owner, resident or neighborhood or community organization to receive a mailed notice.

23.404.040 – PUBLIC HEARINGS AND DECISIONS

A. General. Hearings shall be conducted in a manner consistent with the procedures approved by the review authority.

B. Time and Place of Hearing. A hearing shall be held at the date, time, and place for which notice was given, unless the required quorum of review authority members is not present.

D. Public Comment. All hearings shall be open to the public, which have the opportunity to present their views and be heard in accordance with established procedures.

E. Quorum Required for Action. A majority of the members of review authority must be present to take action on an application.

F. Continued Hearings.

1. Any public hearing may be continued from time to time without further notice, provided that the chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.

2. Hearings may not be continued beyond the time limits for reviewing applications established by the Permit Streamlining Act, CEQA, and other state and federal laws unless the applicant

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24 Stylisitic edits to 23E.12.050.
25 New.
26 New.
28 Source: 23B.32.030. Clarifies hearing procedures apply to all hearings, not just Use Permit hearings.
29 New.
30 New.
31 Language about further notice not being needed is new.
expressly waives his or her rights relating to time limits for City action on a pending application.\textsuperscript{32}

\textbf{G. Action.}

1. After the close of public hearing, the review authority shall either approve, modify, deny the application, or refer it to a mediation or conflict resolution service.

2. If an application is referred to mediation, it must return to the review authority for action.

\textbf{H. CEQA.}\textsuperscript{34} The review authority that approves an application takes final action on the CEQA determination of the proposed project. Final action on CEQA determination shall occur if required prior to or concurrent with action on required permits. The City is not required to take final action on CEQA documents for denied applications.

\textbf{I. Recommendations.} If a public hearing results in a recommendation to another review authority, the Department shall forward the recommendation to the other review authority.\textsuperscript{35}

\begin{quote}
\textbf{Potential Phase 2 Amendment:}

\textbf{A-4.2 Conflicting ZB/LPC Decisions. Provide automatic review and decision by City Council of conflicting ZAB and LPC decisions.}
\end{quote}

\textbf{J. Conditions of Approval.}

1. The review authority may attach conditions to any permit as it deems reasonable or necessary to achieve consistency with the General Plan and Zoning Ordinance, and to promote the public health, safety, and welfare.\textsuperscript{36}

2. As a condition of approval, the City may require an applicant to provide adequate financial security to guarantee the proper completion of an approved project.\textsuperscript{37}

\textbf{K. Use of Conflict Resolution or Mediation Service}\textsuperscript{38}

\begin{quote}
\textbf{Potential Phase 2 Amendment:}

\textbf{A-5 Conflict Mediation. Remove the conflict resolution or mediation service provisions from the Zoning Ordinance.}
\end{quote}

\begin{footnotes}
\textsuperscript{32} Adds reference to Permit Streamlining Act, CEQA, and federal laws.

\textsuperscript{34} New.

\textsuperscript{35} New.

\textsuperscript{36} Consolidates from multiple sections in 23B. Adds reference to General Plan. Changes “municipal health, safety, and welfare” to “public health, safety, and welfare.”

\textsuperscript{37} Replaces 23B.56.050 to clarify intent.

\textsuperscript{38} Stylistic edits to 23B.16 except as noted in footnotes below.
\end{footnotes}
1. **General.** The ZAB or Zoning Officer may refer an applicant and neighbors to a conflict resolution or mediation service to resolve conflicts over a proposed project.

2. **Eligible Services.** The ZAB or Zoning Officer may refer participating parties only to a conflict resolution or mediation service on a pre-approved list maintained by the City.

3. **Non-Binding Results.** The results of the conflict resolution or mediation service shall be non-binding on the final decision of the ZAB or Zoning Officer.

4. **Timing of Referral.** A referral may be made at any time after an application is deemed complete and before a final decision on the application.

5. **Additional Meetings Allowed.** Nothing in this section precludes the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences.

6. **Early Discussions Encouraged.** The City encourages applicants and neighbors to discuss proposed projects early in the project-planning process so that differences may be resolved prior to the submission of an application.

7. **Payment for Service.** The applicant shall pay for the cost of conflict resolution or mediation service.\(^{30}\)

8. **Rules and Expectations.** Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, prior to beginning the process.
   a. The goal of mediation is to seek a mutually agreeable result for the pending application.
   b. Participation for the applicant and others parties is strictly voluntary.
   c. All participants shall be made aware that there is no City requirement to come to an agreement.
   d. The ZAB or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process. The mediator may ask the Board or the Zoning Officer for a clarification of these issues from time to time.
   e. Department staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Zoning Ordinance.
   f. The mediation service will provide the ZAB or the Zoning Officer with a report as to the result of the mediation within 45 days of the referral.
   g. If no agreement between the parties is reached within 45 days, or at any time that the mediator indicates that further meetings between parties is futile, the ZAB or Zoning Officer shall proceed with making a decision on the application. If the parties to the mediation/conflict resolution agree to continue the mediation process, the process may

\(^{30}\) New.
be extended for an additional time period not to exceed 45 days. Unless the applicant expressly waives his or her rights relating to time limits for City action on a pending application, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by state or federal law.

h. Participants in mediation are advised that the ZAB or Zoning Officer cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Zoning Ordinance requires that a project must meet all minimum requirements and any other applicable City ordinances and regulations.

i. Results of the mediation will in no way be binding upon the City, and the ZAB or Zoning Officer may approve, deny or modify any aspect of any mediated agreement.

j. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by his or her decision but may change his or her mind after the mediation.

k. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the ZAB or Zoning Officer decision.

l. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of approval, shall be enforceable by the City.

**L. Resubmittal of Same Application.**

1. **Resubmittals Prohibited.** For twelve months following the denial of discretionary permit application, the Department may not accept an application that is the same or substantially similar to the previously denied application, unless:
   a. The application was denied without prejudice; and/or
   b. Evidence or substantially changed conditions warrant resubmittal as determined by the Zoning Officer.

2. **Determination.** The Zoning Officer shall determine whether an application is the same or substantially similar to the previously denied application.

3. **Appeal.** The determination of the Zoning Office may be appealed to the ZAB, in compliance with Chapter 23-410 (Appeals).

**M. Notice of Decision**

1. **Purpose.** A Notice of Decision is a public notice documenting the City’s decision on a permit application or enforcement action.

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40 Clarifies 23B.56.090 that requirement applies to all discretionary applications, not just Use Permits and Variances. Subsections B (Determination) and C (Appeal) is new to reflect current practice.

41 23B.32.050A&B, 23B.44.040, 23B60.050E
2. **When Required.** The Department shall issue a Notice of Decision after:
   a. ZAB decisions on a Use Permit, Variance, or appeal; and
   b. City Council decisions to revoke a permit or abate a public nuisance.

3. **Notice Contents.** The Notice of Decision shall describe the decision, findings, and conditions of approval.

4. **Notice Mailing.**
   a. The Department shall mail the Notice of Decision to the following:
      i. The applicant.
      ii. Appellant, if applicable
      iii. Any person who has filed a written request for notice.
      iv. The City of Berkeley Central Library.
   b. For code enforcement decision, the Department shall also mail the Notice of Decision to the permit holder and the person who requested code enforcement proceedings, if any.

5. **Notice Posting.** The Notice of Decisions shall be the Permit Service Center.

6. **Additional Distribution.**
   a. For ZAB decisions, the Department shall file a Notice of Decision with the City Clerk. The City Clerk shall make the notice available to interested members of the Council and the public.
   b. For City Council code enforcement decisions, the City Clerk shall file a copy of the Notice of Decision with the Department.

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**23.404.050 – POST-DECISION PROVISIONS**

A. Effective Dates.\(^{42}\)

1. **Council Decisions.**
   a. A City Council decision on a Zoning Ordinance Amendment and other legislative matters is final and becomes effective 30 days after the decision is made.
   b. A City Council decision on permits, appeals, and other non-legislative matters is final and effective on the date the decision is made.

2. **Other Decisions.** The following applies to decisions of the Zoning Officer, Design Review Committee, Landmarks Preservation Commission, and Zoning Adjustments Board.

\(^{42}\) New.
a. An appealable decision is final and effective upon the completion of the appeal period for the decision, without an appeal being submitted or City Council certification, as provided in Chapter 23.410 (Appeals)

b. A non-appealable decision is final and effective on the date the decision is made.

B. Effect of Approval. 44

1. Approval Limited to Proposed Project. 45 An approval authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.

2. Replacement of Existing Uses. 46 Any prior approval of the existing use becomes null and void upon exercise of the new use (e.g. receiving a building permit or business license). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

3. Periodic Review and Reporting.

   a. The City may require periodic review of an approved project to verify compliance with permit requirements and conditions of approval.

   b. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement.

4. Conformance to Approved Plans. 47

   a. Compliance. All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Changes. Changes to an approved project shall be submitted and processed in compliance with Section 23.404.190 (Modification of Permits).

C. Time Limits. This section applies to approved permits that have not been exercised.

1. Expiration of Permit. 48

   a. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except as provided in following Paragraph (b).

   b. A permit authorizing construction may not be declared lapsed if the applicant has applied for a building permit. Or made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

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44 Stylistic edits to 23B.56.060.
45 23B.56.010
46 Clarifies that 23B.56.010.B applies only to replaced uses, not all other uses on a site.
47 Replaces 23B.56.030 t be more concise and clear.
48 Stylistic edits to 23B.56.100C&D. Deletes 23B.556.070 (redundant with other sections).
c. The Zoning Office may declare a permit lapsed only after 14 days written notice to the applicant.

d. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals).

2. **Factors for Determination.** The Zoning Officer shall consider factors of public detriment and nuisance when considering whether to declare a permit lapsed.

3. **Effect of Lapsed Permit.** A Permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed Permit, an applicant must apply for and receive City approval of a new permit.

4. **Exercised Defined.**
   a. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
   b. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully commenced.

5. **Appeals.** The Zoning Officer’s decision to declare a permit lapsed may be appealed in accordance with Chapter 23.404 (Appeals and Certifications).

D. **Permits Remain Effective for Vacant Property.** Once a permit for a use is exercised and the use is established, the Permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original Permit may be re-established without obtaining a new Permit.

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**23.404.060 – PERMIT MODIFICATIONS**

Potential Phase 2 Amendment:

**A-6 Modification of Permits.** Streamline and simplify process to approve modification of permits.

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A. **Purpose and Applicability.** This section establishes requirements and procedures for an applicant to request modification to an approved discretionary permit.

B. **Permit Modification Required.** City approval of a permit modification is required to:

1. Expand the floor or land area devoted to an approved use.
2. Expand a customer service area and/or increasing the number of customer seats.

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49 New to clarify effect of lapsed permit.
50 Stylistic edits to 23B.56.100A&B
51 Revisions to 23B.56.080 to clarify that the Permit remains effective even if the property becomes vacant and that the same use as authorized by the original Permit may be established without obtain a new Permit.
52 Clarifies that 23B.56.020 applies to all discretionary permits, not just Use Permits and Variances.
3. Change a building’s occupant load rating under the City’s Building Code so that it is classified in a different category with a higher occupancy rating.

4. Increase the number of employees, beds, rooms or entrances.

5. Establish a new product line, service, function or activity so as to substantially change the character of the use.

6. Increase the volume of production, storage or capacity of any business manufacturing process or activity.

7. Change the type of alcohol sales and/or service.

8. Change, expand, or intensify a use or structure in any other manner or substantially alters the use or structure.

C. **Review Authority.** A permit shall be modified by the review authority which originally approved the permit.53

D. **Public Notice and Hearing.**

1. **Exercised Permits.** Public notice and hearing in compliance with this chapter is required to modify a permit that has been exercised. See Section 23.404.170.D (Exercised Defined).

2. **Permits Not Yet Exercised.** For modifications to permits not yet exercised, the Zoning Officer or ZAB may act on the permit modification without a public hearing, or may set the matter for public hearing at its discretion. A noticed public hearing for a permit modification shall occur in compliance with this chapter.

E. **New Building Permits Required.** New construction in accordance with a modified permit requires issuance of a new building permit.54

### 23.404.070 – PERMIT REVOCATION

A. **Purpose and Applicability.**55

1. This section establishes procedures for the City to revoke or modify a permit for completed projects due to:
   a. Violations of permit requirements;
   b. Changes to the approved project; and/or
   c. Vacancy for one year or more.

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53 Modifies B which states “AUPs may be modified by the Zoning Officer but all other Permits may be modified only by the Board.”
54 Second sentence in this subsection is added to clarify meaning.
55 New.
2. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy.

3. Expiration of permits not yet exercised are addressed in Section 23.404.280 (Time Limits and Extensions).

B. Initiation. 56

1. Proceedings to revoke or modify a permit may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

2. Such referral shall identify the permit being considered, the property to which the permit applies, and the reason for the potential revocation or modification.

3. The Zoning Officer shall determine the public hearing date for all other referrals.

C. ZAB Recommendation.

1. Public Hearing. 57

   a. The ZAB shall hold a public hearing on a permit revocation or modification in compliance with Section 23.404.080 (Public Notice for ZAB Hearings).

   b. The Department shall notify the current permit holder of the date, time, and location of the hearing.

2. ZAB Recommendation. 58

   a. The ZAB may recommend that the City Council revoke or modify the permit based upon the findings specified in following Subsection E (Findings).

   b. The ZAB recommendation shall be:

      i. Based on the evidence, testimony, and facts presented to the ZAB at the hearing;

      ii. Supported by written findings; and

      iii. Issued within 35 days after the conclusion of the hearing.

3. Final Decision. A ZAB recommendation to deny or modify a permit shall be deemed a final decision if the permit holder consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

4. Report to City Clerk. The Department shall file the ZAB’s recommendation with the City Clerk within 14 days following the recommendation.

56 Stylistic edits to 23B60.030A

57 Removes specific persons to receive notice, which are all included in general notice requirements (except for permit holder).

58 Stylistic edits to 23B60.040
D. City Council Action.\textsuperscript{59}

1. \textbf{Report to Council.} The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

2. \textbf{Public Hearing.}

a. If the ZAB recommends that the City Council revoke or modify the permit, the City Council shall hold a public hearing on the matter within 60 days after the ZAB issued its recommendation.

b. If the ZAB does not recommend that the City Council revoke or modify the permit, the City Council may hold a public hearing on the matter at its discretion.

3. \textbf{Council Decision.} The City Council may modify or revoke the permit based upon the findings specified in following Subsection E (Findings).

E. \textbf{Findings.}\textsuperscript{60} The City Council may revoke or modify a permit any of the following findings can be made:

1. The permit holder has failed to comply with one or more of the conditions of approval.
2. The use or structure has been substantially expanded or changed in character beyond the approved project.
3. The property has been vacant for one year and the permit holder has not made a good faith effort to re-occupy the property with the use allowed by the approved permit.

F. \textbf{Notice of Decision.}\textsuperscript{61}

1. If the City Council revokes or modifies a permit, the City Clerk shall issue a Notice of Decision describing the City Council’s action, with its findings.

2. The City Clerk shall mail the notice to the permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.

3. The City Clerk shall file a copy of the Notice of Decision with the Department.

G. \textbf{Remedies.}\textsuperscript{62}

1. If the City revokes or modifies a permit, the City may impose any of the following remedies:

a. Enjoin the use in whole or in part.

b. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.

\textsuperscript{59} Stylistic edits to 23B60.050
\textsuperscript{60} Stylistic edits to 23B.60.020. Removes requirement for Council hearing within 30 days of ZB recommendation.
\textsuperscript{61} Stylistic edits to 23B.60.050E.
\textsuperscript{62} Stylistic edits to 23B.60.060.
c. Require continued compliance with newly imposed any conditions.

d. Require the permit holder to guarantee compliance with newly imposed conditions.

2. If the permit holder fails to comply with newly imposed conditions, the City may impose additional conditions or enjoin the use in whole or in part.

H. Recovery of Costs.

Potential Phase 2 Amendment:

A-7 Recovery of Costs. Remove the recovery of costs section and integrate with Chapter 1.24. Require all costs to be additive.

1. Permit Revocation and Modification.

a. The City may recover the costs to administer permit revocation and modification proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in following Paragraph (b).

b. The hearing provided by Section 1.24.180 (Service of Notice of Hearing) shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a decision is mailed. The Council shall hold a hearing on appeals as specified in Section 1.24.180.

2. Remedies.

a. If the City imposes a remedy authorized in Section H (Remedies), the City may recover costs for time spent administering the remedy.

b. Payment of City costs shall be a condition of continued operation of a use or structure subject to a remedy.

c. Payments submitted under this Paragraph 2 (Remedies) shall be deducted from any payments submitted under previous Paragraph 1 (Permit Revocation and Modification).
23.406

SPECIFIC PERMIT AND APPROVAL REQUIREMENTS

Sections:
23.406.010 – Purpose
23.406.020 – Administrative Use Permits
23.406.030 – Use Permits
23.406.040 – Variances
23.406.050 – Design Review
23.406.060 – Master Use Permits
23.406.070 – Modification of Development Standards
23.406.080 – Reasonable Accommodation

Potential Phase 2 Amendment:

F-1: Minor Modification. Create a new staff-level discretionary approval process to allow minor adjustments to development standards in all zones.

F-2: Conceptual Review. Establish a conceptual review process where an applicant can receive non-binding feedback from decision-makers before submitting a formal application (or even during the application review process).

23.406.010 – PURPOSE

This chapter identifies procedures for specific types of permits required by the Zoning Ordinance. See Chapter 23.404 (Common Permit Requirements) for procedures that apply generally to all types of permits.

23.406.020 – ADMINISTRATIVE USE PERMITS

A. Purpose.¹ An Administrative Use Permit (AUP) is a discretionary permit approved by the Zoning Officer to ensure that a proposed project will not adversely impact neighboring properties or the general public.

¹ Replaces 23B.28.010.A
B. Review Authority.

1. The Zoning Officer takes action on AUP applications.

2. For a project with special neighborhood or community significance, the Zoning Officer may refer an AUP application to the ZAB for review and final decision. In such an instance, the ZAB shall review and act on the application following the requirements that apply to Use Permit applications. ²

C. When Required. An AUP is required for:

1. Land uses and development projects in each district as identified in Division II (Zoning Districts).

2. Temporary land uses and structures in accordance with Section 23.302.XX(Temporary Land Uses and Structures).

3. Other types of development projects as specified in Division III (Citywide Provisions).


E. Findings for Approval.

1. To approve an AUP, the Zoning Officer shall find that the proposed project:
   a. Will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing, working, or visiting in the area or neighborhood of the proposed use; and
   b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.³

2. To approve the AUP, the Zoning Officer must also make any other AUP findings specifically required by the Zoning Ordinance for the proposed project.⁴

² Stylistic edits to 23B.28.030.
³ Stylistic edits to 23B.28.050A and 23B.40.030A. Added persons “visiting” in the area to 1.a.
⁴ 23B.28.010B
3. When taking action on an AUP, the Zoning Officer shall consider the following when making findings:
   a. The proposed land use; and
   b. The structure or addition that accommodates the use.  
4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application. 
5. The Zoning Officer shall deny an AUP application if unable to make any of the required findings.

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Potential Phase 2 Amendment:

**B-4: AUP Findings.** Revise AUP findings to better reflect desired outcomes. Restate findings as a positive rather than negative.

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F. **ZAB Notification.** The Zoning Officer shall inform the ZAB of an AUP decision.

23.406.030 – USE PERMITS

A. **Purpose.** A Use Permit is a discretionary permit approved by the Zoning Adjustments Board (ZAB) to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public.

B. **Review Authority.** The ZAB takes action on all Use Permit applications.

C. **When Required.**

   1. Land uses and development projects that require a Use Permit in each zoning district are identified in Division II (Zoning Districts).
   2. Other types of development projects that may require a Use Permit are specified in Division III (Citywide Provisions).

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Potential Phase 2 Amendment:

**D-1: AUP for Low-Impact Uses.** Allow with an Administrative Use Permit low-impact uses currently requiring a Use Permit.

5 New, to match Use Permit findings section.
6 New, to match Use Permit findings section.
7 Stylistic edits to 23B.28.050C
8 Modifies 23B.28.040C which says the Notice of Administrative Decision shall be forwarded to the Board.
D. Public Notice and Hearing. The ZAB shall review and take action on a Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

E. Findings for Approval.9

1. To approve a Use Permit, the ZAB shall find that the proposed project:
   a. Will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing, working, or visiting in the area or neighborhood of the proposed use; and
   b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

2. To approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.

3. When taking action on a Use Permit, the ZAB shall consider in its findings:
   a. The proposed land use; and
   b. The structure or addition that accommodates the use.

4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.

5. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

Potential Phase 2 Amendment:

**D-2: UP Findings. Revise UP findings to better reflect desired outcomes. Restate findings as a positive rather than negative.**

23.406.040 – Variances

A. Purpose.10 A Variance is a discretionary approval that allows for deviations from development standards and land use regulations in the Zoning Ordinance. The City may grant a Variance only when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property.

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9 Stylistic edits to 23B.32.040. Adds concept of persons “visiting in the area” to 1a. Removes requirement to state reasons for determination and statement about conditions, both of which apply to all discretionary approvals and is now addressed in 23.404.

10 New.
B. When Allowed.\textsuperscript{11}

1. **Deviations Allowed with a Variance.** The City may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.

2. **Deviations Allowed with a Use Permit.** The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
   a. The property is 30 feet or less from an open creek; and
   b. Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).

C. Variances Not Allowed. A Variance may not be granted to allow deviation from a requirement of the General Plan.\textsuperscript{12}

D. Review Authority. The ZAB takes action on all Variance applications.

E. Public Notice and Hearing.\textsuperscript{13} The ZAB shall review and act on a Variance application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

F. Findings for Approval.\textsuperscript{14} To approve a Variance, the ZAB shall make all of the following findings:

1. There are exceptional circumstances applying to the property which do not apply generally in the same district.
2. The Variance is necessary to preserve a substantial property right.
3. The Variance will not adversely affect the health or safety of persons residing or working near the property.
4. The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements.
5. The Variance will promote the municipal health, welfare and safety and benefit the City as a whole.
6. Any other Variance findings required by Zoning Ordinance can be made.

\textsuperscript{11}Stylistic edits to 23B.44.010 for clarity. Revises 23B.44.010 first sentence to expand scope of projects eligible for a Variance.
\textsuperscript{12}New.
\textsuperscript{13}Replaces 23B.44.040.
\textsuperscript{14}Stylistic edits to 23B.44.030. Deletes 23B.44.030.
**Potential Phase 2 Amendments:**

| F-4: Variance Findings. Revise Variance findings to more closely align with Variance findings in the Government Code and to revise reference to “benefit the City.” |

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### 23.406.050 – DESIGN REVIEW

**A. Purpose.** Design Review is a discretionary process to ensure that exterior changes to non-residential buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines. The purpose of Design Review is to:

1. Encourage excellence in building and site design.
2. Ensure that development is compatible with its urban context.
3. Provide a pleasing urban environment for persons living, working, or visiting the city.

**B. When Required.**

1. Design Review is required for:
   a. Projects in all non-residential districts.
   b. Commercial, mixed-use, and community and institutional projects in the R-4, R-SMU and R-S district.
   c. Mixed use and community and institutional projects in the R-3 district within the Southside Plan area (see Section 23.202.XX for Plan area).

2. As used in previous Paragraph (1), “project” means an activity requiring a building or sign permit that involves any of the following:
   a. Modifying the exterior of an existing structure.
   b. Additions to an existing structure.
   c. Demolishing all or a portion of an existing structure.
   d. Removing all or part of a building facade fronting the public right-of-way.
   e. Constructing a new structure.
   f. Installing or replacing a sign.

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15 Source: 23E.08 and 23E.12. Changes not noted in subsection footnotes includer: removing specific design review application requirements removed from 23E.12.0101 and instead stating Design Review applications are subject to broadly written submittal requirements that apply all permits in 23XX; consolidating notice and appeal provisions in 23E.12.050 and 23E.12.060 consolidated with related provisions for other permits in corresponding chapters.

16 Revisions to 23E.08.010 to clarify design review

17 Revises 23E.08.020 to clarify which projects require Design Review.
Potential Phase 2 Amendments:

**C-1: Residential Design Review.** Replace use permits with a residential design review process to address site planning and design issues for new homes and additions; establish clear and appropriate design criteria for residential projects.

**C-2: When Required.** Reduce the type of projects subject to design review. Don’t require design review for very minor modifications to buildings and structures.

**C-3: Minor Projects.** Establish a new over-the-counter approval process to address design review for signs/awnings and minor facade modifications.

C. Review Authority.\(^\text{18}\)

1. **Department Staff.** Department staff, under the supervision and authority of the Zoning Officer, conducts Design Review for projects requiring an AUP or a Zoning Certificate for a building permit.\(^\text{19}\) Design review conducted by Department staff is referred to as “Staff-Level Design Review.”

2. **Design Review Committee or Department Staff.**\(^\text{20}\) For projects requiring a public hearing by the Zoning Adjustments Board (ZAB), Design Review shall be conducted by either the Design Review Committee or Department staff, as determined by the ZAB. When making this determination, the ZAB shall consider project size, visibility, and degree of sensitivity to the neighboring properties or the general public. Design review conducted by …..

3. **Landmarks Preservation Commission.** The Landmarks Preservation Commission (LPC) conducts Design Review of projects which involve landmarks, structures of merit or buildings within a historic district in accordance with Chapter 3.24 (Landmarks Preservation Commission).\(^\text{21}\) The LPC conducts Design Review for landmarked properties through the Structural Alteration Permit process.

Potential Phase 2 Amendments:

**C-4: Staff Review of Landmarks.** Allow staff to approve Design Review of minor projects affecting landmarks, appealable to the LPC.

**C-5: Staff Review.** Allow staff to conduct Design Review for most projects, except for a select few major projects that would continue to be reviewed by the DRC.

**C-11: Design Review for ZAB Projects.** Clarify criteria uses to determine whether staff or the DRC conducts Design Review for projects approved by the ZAB.

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\(^{18}\) 23E.08.030
\(^{19}\) 23E.12.040.A.
\(^{20}\) Stylistic edits to 23E.08.030
\(^{21}\) Stylistic edits to 23E.12.020.A.
D. **Zoning Officer Referrals.** The Zoning Officer may refer any project subject to ZAB review to the Design Review Committee, staff, or the LPC for non-binding input on design-related issues. However, Design Review approval is required only for projects in previous Subsection B (When Required).

E. **Landmarks Preservation Commission Referrals.** The Landmarks Preservation Commission (LPC) may refer any project subject to LPC review to the Design Review Committee or staff for non-binding input on design-related issues.

F. **Design Guidelines.**

1. The City of Berkeley Design Guidelines provide direction to the City when reviewing proposed projects and assist applicants in planning and design of their projects. The Design Guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.

2. When conducting design review the Design Review Committee, the LPC, or staff shall use the Design Guidelines adopted by the Planning Commission as its official policy.

3. The Design Review Guidelines may be amended by the Planning Commission. The ZAB may comment to the Planning Commission on such amendments.

G. **Scope of Design Review.** Design Review considers only issues of building and site design and does not address land use issues. Site design included the placement of buildings on a lot, vehicle access and circulation, pedestrian circulation, parking placement and design, landscaping, and other similar issues.

H. **Preliminary Design Review.** For projects reviewed by the ZAB, Department staff or the Design Review Committee shall conduct Preliminary Design Review prior to ZAB action unless Design Review is included as a condition of approval. The ZAB shall consider Preliminary Design Review recommendations when acting on the project. Final Design Review action shall occur after ZAB action on the project.

I. **Referrals to Landmarks Preservation Commission.**

1. **Mandatory Referrals.** The following Design Review applications shall be referred to the LPC for review and comment prior to action of the application:

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22 Revises 23E12.040.B to clarify that while the ZO may refer any ZAB project to DRC, design staff, or the LPC for input on design issues, formal Design Review approval is required only as identified in the code.

23 New.

24 Stylistic edits to 23E.08.010.B

25 23E.08.040B

26 23E.08.040C

27 Stylistic edits to 23E.08.010.C. Clarifies what is included in site design.

28 Revises 23E.12.040C to state Preliminary Design Review is mandatory for ZAB projects, as is the intent.

29 23E.12.020
a. Projects that involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24.

b. Projects that involve a building or a structure over 40 years old which may have special architectural or historical significance, as determined by the secretary to the LPC.

2. **Optional Referrals.** Department staff or the Design Review Committee may choose to refer the following projects to the LPC for review and comment prior to action of the application:
   
a. Projects that involve a building that is 40 years old or less that may have special architectural and/or historical significance, as determined by the secretary to the LPC.

b. Signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC’s current List of Structures and Sites.

### Potential Phase 2 Amendment:

**C-6: LPC Referrals.** Limit LPC referrals to structures on the State Historic Resources Inventory or LPC-adopted List of Structures and Sites. Eliminate “Optional Referrals.”

### J. Design Review Timeline. 

1. Design Review projects requiring an AUP or a Zoning Certificate shall be completed within 60 days of the date the application is deemed complete. If an applicant modifies the application, or if the applicant submits a written time extension, Department staff may extend the review period beyond 60 days.

2. Design Review for projects that require ZAB approval shall be completed within 60 days of submittal of complete final Design Review plans or within the time limit required by the Permit Streamlining Act, whichever is less.

### K. Public Notice.  
Public notice of pending Design Review decisions shall be given in accordance with Section 23.404.100 (Public Notice for Design Review).

### L. Public Hearing.  
None required.

### M. Design Review Committee Proceedings.

1. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public.

2. Review of a project by the Design Review Committee may be continued as necessary subject to the timeline set forth in this Chapter.

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30 23E.12.030
31 23E.12.050
3. The Design Review Committee shall adopt its own rules and procedures.

N. **Basis for Approval.** The review authority shall consider a proposed project in relation to its surrounding context when acting on a Design Review application.

1. The review authority may approve a Design Review application only upon finding that the proposed project conforms with the City of Berkeley Design Guidelines and any City-adopted design standards and guidelines applicable to the project.

2. The review authority may consider public input during the Design Review process and may require modifications to the proposed project as a condition of Design Review approval.

Potential Phase 2 Amendment:

*C-7: Criteria. Establish more objective Design Review Criteria in the Zoning Ordinance.*

O. **Changes to Approved Projects.**

1. **Design Review Modifications.** Prior to issuance of a Building Permit, Department staff may approve minor changes to a project with final Design Review approval ("Design Review Modifications") if the change complies with all of the following criteria:
   a. The change does not expand or increase the size of a structure.
   b. The change does not involve a feature of the project that was:
      i. a specific consideration by the review authority in granting the approval;
      ii. a condition of approval; or
      iii. a basis for a finding in the project CEQA determination.
   c. The change is consistent with the spirit and intent of the original approval.

2. **Other Changes.** A project change that does not meet the definition of a minor change in previous Paragraph (1) shall be approved following the same procedures as the original Design Review approval.

P. **Appeals.** Design Review decisions may be appealed in accordance with Chapter 23.410 (Appeals).

Q. **Issuance of Permits.**

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32 Revisions to 23E.08.040.A&D to clarify basis for approval. Changes “urban context” to “surrounding context.” Last sentence in 23E.08.040.D is removed as this applies to all City decisions and applications.

33 This is new to reflect current practice. The existing code is silent on how to address project changes.

34 Stylistic edits to 23E.08.020.C. Consolidates 23E.08.020.D&E.
1. The review authority may approve a Use Permit, Administrative Use Permit, or Variance only after Preliminary Design Review approval unless Design Review is included as a condition of approval.

2. The City may issue a Building Permit, Sign Permit, or Zoning Certificate only after a project receives all Design Review approvals as required by this section.

R. Review of Building Plans. Department staff shall review all Building Permit applications subject to Design Review for compliance with the approved Design Review plans and conditions.35

23.406.060 — MASTER USE PERMITS

A. Purpose.36 A Master Use Permit is a discretionary approval that allows flexibility in the amount of space occupied by individual tenants in a multi-user site. The purpose of a Master Use Permit is to:

1. Facilitate the implementation of the General Plan and area plans, including the West Berkeley Plan.

2. Expedite the reuse of large and multi-user sites that might otherwise prove difficult to reuse.

3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole.

4. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner.

5. Improve Berkeley’s competitiveness in attracting and retaining businesses by allowing businesses to quickly move into a site once overall development requirements have been established.

B. Review Authority. The ZAB takes action on all Master Use Permit applications.37

C. Voluntary Option. A Master Use Permit is a voluntary option for property owners. If a property owner does not request and receive a Master Use Permit, individual tenants will be subject to the Use Permit requirements that ordinarily apply as required by the Zoning Ordinance.

D. Where Allowed. A property that meets the following criteria may apply for a Master Use Permit:

1. The property is located entirely or partially in one of the following districts:
   a. Any commercial and mixed-use district.

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35 23E.12.070
36 23B.36.020
37 23B.36.040.A

c. Mixed Manufacturing (MM) district.

d. Manufacturing (M).

2. The property will be occupied by three or more independently operating businesses.\textsuperscript{38}

E. Use Allocation. A Master Use Permit shall state the square feet of buildings and land allocated for the following uses:

1. Industrial (manufacturing, wholesaling and warehousing)
2. Office (excludes offices ancillary to other uses)
3. Commercial (retail, personal service, restaurants)
4. Live/work units
5. Residential

F. Allowed Variations.

1. The area of a building or site occupied by a use may exceed the Master Use Permit allocation with the permits specified in Table 23.406-1.

<table>
<thead>
<tr>
<th>Variation in Use Allocation from Master Use Permit</th>
<th>Permit Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>10% or less</td>
<td>None. Allowed By-Right</td>
</tr>
<tr>
<td>More than 10% to 25%</td>
<td>AUP</td>
</tr>
<tr>
<td>More than 25%</td>
<td>Use Permit</td>
</tr>
</tbody>
</table>

2. If the allocation of floor area for various uses as specified in previous Paragraph D (Where Allowed) remains within the limits set forth in Table 23.406-1, lease spaces may be divided or aggregated in any manner as-of-right.

G. Public Notice and Hearing.\textsuperscript{39} The ZAB shall review and take action on a Master Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

H. Findings for Approval.\textsuperscript{40} To approve a Master Use Permit, the ZAB must find that approval will expedite occupancy and use of the site consistent with the purpose of the district, the General Plan, and any applicable area plan.

\textsuperscript{38} 23B.36.010
\textsuperscript{39} 23B.36.040B
\textsuperscript{40} Stylistic edits to 23B.36.050. Added consistency with General Plan.
23.406.070 – Modification of Development Standards

A. Purpose. A Modification of Development Standards is a discretionary approval to modify land use and development standards for development projects in the West Berkeley Plan area. The purpose of these modifications is to:

1. Facilitate the implementation of the West Berkeley Plan.
2. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse.
3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole.
4. Allow modifications of standards that serve the purpose of their districts and the West Berkeley Plan on large, complex sites and where the design of the project is compatible with the design and character of the surrounding area.

B. Eligibility. A project must satisfy the following criteria to be eligible for a Modification of Development Standards.

1. More than 50 percent of the site area must be within a C-W, MU-LI, MM or M district.
2. The site must be either:
   a. At least five contiguous acres within the City boundary under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or
   b. Less than five acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), mainline railroad tracks, and/or the borders of the City.

C. Allowed Modifications. The ZAB may allow modifications to the following land use and development standards:

1. Permitted location of land uses within a building, site, or district.
2. Development standards including but not limited to, height, yards, open space, and parking.

D. Project Phases. The ZAB may approve a Modification of Development Standards application to allow a project to be built in phases.

E. Limitation. A Modification of Development Standards may not allow any modification that would violate Section 23.206.XX (Changes of Use Limitations).

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41 Stylistic edits to 23B.48.020.
42 Stylistic edits 23B.48.010A&C
43 23B.48.030
44 Clarifies 23B.48.010.B
F. **Review Authority.** The ZAB takes action on all Modification of Development Standards applications.

G. **Public Notice and Hearing.** The ZAB shall review and act on a Modification of Development Standards application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

H. **Findings for Approval.**

1. To approve a Modification of Development Standards, the ZAB shall make all of the following findings:
   a. The site is eligible for a Modification of Development Standards under Subsection B (Eligibility) and E (Limitation);
   b. The project is likely to advance the purposes of the West Berkeley Plan and this section;
   c. The project supports the attraction and/or retention of the types of businesses reflected in the purpose statement of the applicable district.
   d. The modification is necessary and appropriate for the development of the proposed project.

2. To approve a Modification of Development Standards, the ZAB shall also make all required Use Permit findings in Section 23.406.070 (Use Permits) and any additional Use Permit findings required by the Zoning Ordinance for the use or development in the applicable district.

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23.406.080 – REASONABLE ACCOMMODATION

A. **Purpose.** This section establishes a process for the City to approve modifications to development regulations to support equal access to housing for persons with disabilities. This process is established in accordance with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act.

B. **When Allowed.**

1. **Eligible Applicants.**
   a. Any person with a disability, or their representative, may request reasonable accommodation as allowed by this section.

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45 Replaces 23B.44.040.
46 Stylistic edits to 23B.48.040. Clarifies that Finding (d) applies to all approvals.
47 Simplifies 23B.52.010.
48 Replaces 23B.52.020A
b. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.49

2. **Eligible Request.** An eligible applicant may request a modification or exception to any provision in the Zoning Ordinance or Subdivision Ordinance (Title 21) that acts as a barrier to fair housing opportunities for persons with disabilities.

C. **Review Authority.**

1. **Zoning Officer.** The Zoning Officer takes action on reasonable accommodation applications unless the application is filed for concurrent review with a requested permit reviewed by the Zoning Adjustments Board (ZAB).

2. **Zoning Adjustments Board.** If a reasonable accommodation application is submitted concurrently with a permit application reviewed by the ZAB, the reasonable accommodation application shall be acted on by the ZAB.

3. **Referral to Zoning Adjustments Board.** The Zoning Officer may refer any reasonable accommodation application to the ZAB for review and final decision.

D. **Application Requirements.**

1. **Application.**50 A request for reasonable accommodation shall be submitted on an official City application form. No application fee is required. The application shall include:
   a. The name, address, and telephone number of the applicant.
   b. The address of the property for which the accommodation is requested.
   c. The current use of the property.
   d. The ordinance provision for which modification is requested.
   e. Reason that the requested accommodation may be necessary to enable the person with the disability to use the dwelling.
   f. Other information requested by the Zoning Officer.

2. **Concurrent Applications.** If the project for which the reasonable accommodation is requested requires another planning permit (e.g., Use Permit), the reasonable accommodation application shall be filed concurrently with the related permit application.51

E. **Review Procedure.**

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49 New.
50 Stylistic edits to 23B.52.030 and 23B.52.070
51 Stylistic edits to 23B.52.020B. Deletes 23B.52.020C&D, which is unnecessary.
1. **Independent Application.**\(^{52}\)
   a. For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.

   b. If necessary to reach a determination on the request for reasonable accommodation, the Zoning Officer may request further information from the applicant consistent with fair housing laws. In the event that a request for additional information is made, the 45-day period to issue a decision is stayed until the applicant submits the requested information.

2. **Concurrent Application.**\(^{53}\) For a reasonable accommodation request submitted concurrently with another planning permit application, the reasonable accommodation request shall be reviewed and acted upon concurrently with the other application.

F. **Action on Application.**

1. **Decision.**\(^{54}\) The review authority shall make a written decision supported by findings and conclusions to approve, approve with conditions, or deny the application.

2. **Criteria.**\(^{55}\) The review authority shall consider the following factors when acting on the application:
   a. Need for the requested modification.
   b. Alternatives that may provide an equivalent level of benefit.
   c. Physical attributes of and proposed changes to the property.
   d. Whether the requested modification would impose an undue financial or administrative burden on the City.
   e. Whether the requested modification would constitute a fundamental alteration of the City’s zoning or subdivision regulations.
   f. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood.
   g. Any other factor that may have a bearing on the request.

3. **Conditions of Approval.** The review authority may impose conditions of approval, including a condition to provide for the automatic expiration of the approval under appropriate circumstances (e.g., person with disability vacates home).\(^{56}\)

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\(^{52}\) New. Replaces 23B.52.040, which unlawfully required the application to be reviewed in the same manner as a Variance.

\(^{53}\) Replaces 23B.52.040.

\(^{54}\) Stylistic edits to 23B.52.050A&C

\(^{55}\) Stylistic edits to 23B.52.050B

\(^{56}\) Clarifies meaning of 23B.52.060.
G. **Appeals.**\(^\text{57}\) Reasonable accommodation decisions may be appealed in accordance with Chapter 23.410 (Appeals).

\(^\text{57}\) Stylistic edits to 2352.050.C
23.408

GREEN PATHWAY

Sections:
23.408.010 – Applicability
23.408.020 – Purpose
23.408.030 – Eligibility Determination
23.408.040 – Green Pathway Application
23.408.050 – General Requirements
23.408.060 – Requirements for Large Buildings and Hotels
23.408.070 – Development Standards
23.408.080 – Streamlined Permitting Process
23.408.090 – Tolling
23.408.100 – Compliance
23.408.110 – City Manager Authority to Issue Regulations

23.408.010 – APPLICABILITY

This chapter applies only to development projects in the Downtown Mixed Use (C-DMU) district that:

A. Do not propose alteration or demolition of a historical resource as defined by the California Code of Regulations Title 14, Section 15064.5; and

B. Will not have a significant adverse impact on any adjacent historical resource as defined by the California Code of Regulations Title 14, Section 15064.5.

23.408.020 – PURPOSE

A. 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:

1. Exceed the Green Building requirements applicable in the C-DMU district; and

2. Provide extraordinary public benefits that could not otherwise be obtained, as specified in this chapter.

B. This chapter establishes standards and requirements to clarify the City’s expectations for projects eligible for approval under this chapter and to ensure they will be designed and developed consistent with the Downtown Area Plan.

1 Stylistic edits to 23B.34
23.408.030 – ELIGIBILITY DETERMINATION

A. RFD Purpose. To determine if a project is eligible for processing under this chapter, an applicant shall submit to the City a Request for Determination (RFD). The RFD process set forth in this section applies to development projects that may be eligible for Green Pathway processing notwithstanding anything to the contrary in Chapter 3.24 (Landmarks Preservation Commission).

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

2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent).

C. Processing a RFD.

1. The City shall not accept an RFD 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 Subsection B (RFD Submittal) above, 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 that determines that the applicant’s submitted historic resource assessment is complete and accurate.
4. The LPC shall begin 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 Municipal Code Section 3.24.140 (Designation proposal--Public hearing notice requirements).
D. **Timeline Extensions; Failure to Act.** Any of the timelines specified in this Section may be extended at the written 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.

E. **When Chapter 3.24 Applies.** If a property that is the subject of a RFD is not designated within the time limitations set forth in this section, Municipal Code Chapter 3.24 (Landmarks Preservation Commission) shall not apply to that property unless and until the earliest of the following occurs:

1. The expiration of two 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, then either:
   a. The application is withdrawn or denied; or
   b. Any entitlement approved for the property expires, is cancelled or revoked, or for any other reason ceases to have effect.

F. **Appeal and Certification.** Decisions by the LPC under this Section shall be subject to appeal as set forth in Section 3.24.300 (Appeals--Procedures required--City Council authority), and certification as set forth in Section 3.24.190 (Council certification authorized when—Effect).

G. **Effect of Determination** If a subject property is determined to be an historical resource as defined by California Code of Regulations, Title 14, Section 15064.5, it shall not be processed as a Green Pathway Project under this Chapter.

23.408.040 – **GREEN PATHWAY APPLICATION**

A. **Voluntary Option.** 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. **Application Contents.** An application for processing using 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 if the application is approved; and
2. Proof that the LPC has not taken any action under Section 23.408.030 (Eligibility) to designate the subject property as a structure of merit or landmark under Chapter 3.24 (Landmarks Preservation Commission).

C. **Additive Requirements.**

1. 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 the Zoning Ordinance.
2. 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).

23.408.050 – General Requirements

All Green Pathway projects are subject to the following requirements:

A. Affordable Units.

1. In addition to any other applicable affordable housing mitigation fee or requirement, at least 20 percent of the total units in a proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent 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.

2. 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.

3. As an alternative, an applicant may pay an in-lieu fee to the Housing Trust Fund as established by the City Council.


C. Local Hire Requirement.

1. The applicant shall sign an agreement that no less than 30 percent of a project’s construction workers will be Berkeley residents.

2. If insufficient Berkeley residents are available to fulfill the 30 percent 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).

3. If insufficient residents are available from the Green Corridor to fulfill the 30 percent local hire requirement, then residents of Alameda County will be used to fulfill the local hire requirements.

4. 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 percent local hire requirement by providing the same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subsection.

D. Use Regulations. Uses shall comply with the requirements and limitations of Sections 23.204.XX (C-DMU Use Regulations).
23.408.060 — REQUIREMENTS FOR LARGE BUILDINGS AND HOTELS

In addition to the requirements of Section 23.408.050 (General Requirements), a 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. Prevailing Wage.

1. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.

2. 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.

B. State Certified Apprenticeship Program. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16 percent of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

C. Requirements Binding to Future Owners. As a condition of approval for any Green Pathway project subject to the requirements of this section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

23.408.070 — DEVELOPMENT STANDARDS

Green Pathway projects shall comply with the applicable development standards in Section 23.204.XXX (C-DMU Standards) 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 1 foot for every 1 foot by which the height exceeds 45 feet.

B. Street Wall Facade. 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 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.
e. Other architectural features.

C. Shadow Analysis. A shadow analysis is 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 by a building 60 feet in height that complies with all applicable setback requirements on an area within a radius of 75 feet of the closest building wall that would be cast on March 21, June 21, December 21, and September 21 at the following times of day:
   a. Two hours after sunrise;
   b. 12 p.m. noon; and
   c. Two hours before sunset.

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 previous Paragraph (1).

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

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

23.408.080 – STREAMLINED PERMITTING PROCESS

A. Projects Involving Only Buildings at or Below 75 Feet in Height.

1. Projects Allowed By-Right. Notwithstanding anything to the contrary in the Zoning Ordinance, 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 Section 23.406.030 (Design Review).

2. Historic Resource. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23.408.030 (Eligibility
Determination), 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.

a. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subsections A and B of Section 23B.34.030 (Eligibility Determination) 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 (DRC).

b. The DRC 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 DRC 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.


a. Notwithstanding Section 23.406.030 (Design Review), the DRC 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.

b. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the DRC shall treat applicable guidelines as standards.

c. The decision of the DRC 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 14 days of the date of the Committee’s action. Design Review appeals shall be limited to design issues.

B. Projects Involving Buildings Over 75 Feet in Height.

1. Notwithstanding anything to the contrary in the Zoning Ordinance, the Zoning Adjustments Board (ZAB) shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under previous Subsection (A) 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 (CEQA).

2. Such projects shall receive priority status in order to meet the review timeframes set forth in this section.
**23.408.090 – TOLLING**

Timelines under this chapter shall be extended by the time taken for any proceedings pursuant to Chapter 3.24 (Landmarks Preservation Commission), relating to a Green Pathway project.

**23.408.100 – 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.

**23.408.110 – 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

A. Setting and administering gross rents and sale prices for below-market-rate units.

B. Specifying and requiring 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.
23.410

APPEALS AND CERTIFICATIONS

Sections:
23.410.010 – Chapter Purpose
23.410.020 – Appeal Subjects and Jurisdiction
23.410.030 – Filing and Processing of Appeals
23.410.040 – Hearing and Decision
23.410.050 – City Council Certifications

23.410.010 – CHAPTER PURPOSE

This chapter establishes procedures for the appeal and certification of City actions made when administering the Zoning Ordinance.

23.410.020 – APPEAL SUBJECTS AND JURISDICTION

A. General. City actions made when administering the Zoning Ordinance may be appealed as shown in Table 23.410-1.¹

B. Code Enforcement Appeals. See Municipal Code Chapter 1.24 (Abatement of Nuisances).²

C. Landmarks Preservation Commission Appeals. Decisions by the Landmarks Preservation Commission (LPC) when administering the Zoning Ordinance shall be appealed in accordance with Municipal Code Chapter 3.24 (Landmarks Preservation Commission).³

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¹ New table summarizing appeal subjects and jurisdiction. Source of table contents and clarifications noted in table.
² Replaces 23B.60.070 and 23B.64.070.
³ New.
### TABLE 23.410-1: APPEAL SUBJECTS AND REVIEW AUTHORITY

<table>
<thead>
<tr>
<th>ACTION</th>
<th>ORDINANCE SECTION</th>
<th>MAY BE APPEALED BY</th>
<th>IS APPEALED TO</th>
<th>MUST BE FILED WITHIN</th>
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<tbody>
<tr>
<td><strong>Zoning Officer Actions</strong></td>
<td></td>
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<tr>
<td>Determination of lapsed permit[^9]</td>
<td>23.404.170</td>
<td>Permit holder</td>
<td>ZAB</td>
<td>20 days of mailing determination notice</td>
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<td><strong>Design Review Committee Actions</strong></td>
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<tr>
<td><strong>Zoning Adjustments Board Actions</strong></td>
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<tr>
<td>Variance decisions[^12]</td>
<td>23.406.080</td>
<td>Any person</td>
<td>City Council</td>
<td>14 days of mailing the Notice of Decision</td>
</tr>
</tbody>
</table>

[^7] Modifies 23B.52.050. Clarifies different process for ministerial decisions on reasonable accommodation requests vs requests attached to a planning permit. For staff-level decisions, clarifies who may file appeal, appeal body, and appeal period.
[^9] Source: 23B.56.100.D
[^10] Source: 23E.12.050.C. Clarifies any “design review” action may be appealed, to distinguish from determinations of conformity with Downtown Design Guidelines which are subject to a different process.
[^12] Source: 23B.44.040
### CHAPTER 23.410 – APPEALS AND CERTIFICATIONS

<table>
<thead>
<tr>
<th>ACTION</th>
<th>ORDINANCE SECTION</th>
<th>MAY BE APPEALED BY</th>
<th>IS APPEALED TO</th>
<th>MUST BE FILED WITHIN</th>
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</thead>
<tbody>
<tr>
<td>Decisions on an appeal(^{13})</td>
<td>23.410</td>
<td>Any person</td>
<td>City Council</td>
<td>14 days of mailing of the Notice of Decision</td>
</tr>
</tbody>
</table>

**Notes:**

1. The Zoning Officer may extend the appeal period for a longer time.\(^{14}\)
2. For reasonable accommodation requests associated with a project requiring a discretionary permit (e.g., Use Permit), the appeal procedures are the same as for the discretionary permit.\(^{15}\)
3. The City Manager's decision is final. No further appeal is allowed.\(^{15}\)
4. Determinations of conformity with Downtown Design Guidelines for Streamlined Entitlement Process (Section 23.408.090.C) is appealed directly to the City Council.\(^{16}\)

\(^{13}\) Source: 23B.28.060.E. Expands to ZAB decisions on all appeals, not just AUPs.


\(^{15}\) Source: 23E.24.020.

\(^{16}\) Source: 23B.34.080.C.
23.410.030 – FILING AND PROCESSING OF APPEALS

Potential Phase 2 Amendments:

G-2: Eligibility to Appeal. Limit who may appeal a decision.
G-3: Appeal Periods. Standardize the appeal period for all decisions (14 days).

A. General. Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.17

B. Eligibility and Timing of Appeal. Table 23.410-1 shows who is eligible to file an appeal and the date by which an appeal must be filed.

C. Appeal Fees.
   1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in following Paragraph (2).18
   2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the ZAB and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240 of Chapter 3.24 (Landmarks Preservation Commission).19

D. Form of Appeal.20
   1. An appeal shall be submitted to the Department in writing together with all required application fees.
   2. The appeal shall include the name and contact information of the appellant.
   3. The appeal application shall state the pertinent facts and the basis for the appeal.
   4. The whole decision or part of the decision may be appealed. If an appellant chooses, an individual finding, action, or condition may be appealed.

E. Appeal Subject – Design Review. Appeals of the Design Review Commission and staff-level Design Review decisions are limited to design-related issues.21

F. Takings Claims.22
   1. If a basis of an appeal is that the review authority’s action constituted a taking of property under the California or United States Constitutions, that basis and all supporting evidence and argument shall be clearly stated as a basis of the appeal, or it shall be waived.

17 New.18 Consolidates scattered content. Clarifies that fee requirement applies to all appeals.
18 Consolidates scattered content. Clarifies that fee requirement applies to all appeals.
19 Source: 23B.32.050.E
20 Consolidates scattered content. Clarifies that appeals must be filed with an official City application form and that the whole or part of a decision may be appealed.
21 Source: 23.34.080, 23E.12.050, 23E.12.0560
22 Modifies 23B.32.050 to apply to all appeals.
2. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination.

3. This requirement shall apply to appeals on the basis that the review authority’s decision or any condition of approval:
   a. Denied the applicant any reasonable economic use of the subject property;
   b. Was not sufficiently related to a legitimate public purpose;
   c. Was not sufficiently proportional to any impact of the project; or
   d. For any other reason constituted a taking of property for public use without just compensation.

G. Copy to Zoning Officer. After receiving an appeal, the City Clerk shall forward a copy to the Zoning Officer.

H. Notice to Applicant. If the appeal is made by someone other than the applicant, the Department shall forward a copy of the written appeal to the applicant.23

I. Effect of Appeal. Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is made by the review authority.24

23.410.040 — HEARING AND DECISION

Potential Phase 2 Amendments:

G-4: Scheduling Appeal Hearing. Establish a minimum timeframe for the City to hear an appeal.

G-5: Appeal Subject—Public Comment. When acting on an appeal, require that the ZAB and Council only consider public comment and correspondence related to the subject of the appeal.

A. Report and Scheduling of Hearing.

1. Upon receiving an appeal, Department staff shall prepare a report on the matter and schedule a hearing with the appropriate review authority.25

2. For appeals of projects denied due to conflicting decisions of the ZAB and Landmarks Preservation Commission, the City Council shall schedule a hearing at the soonest possible date after the final ZAB or Landmarks Preservation Commission action.26

23 Source: 23B.32.050.D. Clarifies that applicant notification is for all appeals, not just Use Permits
24 Stylistic edits to 23B.28.060.B. Clarifies effect for all appeals, not just Administrative Use Permits.
25 Consolidates various statements and clarifies this applies to all appeals.
26 Source: 23B.32.050.E
3. Any appeal of a Design Review decision shall be heard by the review body within 45 days of the appeal filing.\(^27\)

4. All appeals on a single project shall be considered together at the same hearing.\(^28\)

B. Public Notice. Notice of appeal hearings shall be given in accordance with Chapter 23.XX (Public Notice and Hearing).\(^29\)

C. Hearing Materials. Before the hearing, Department staff shall forward to the review authority the written appeal letter and related information on the appealed decision.\(^30\)

D. Hearing Procedures. Public hearings on an appeal shall be conducted in accordance with applicable procedures in Chapter 23.XX (Public Notice and Hearing).\(^31\)

E. De Novo Review.\(^32\)

   1. The review authority may take action on the subject of the appeal or any aspect of the appealed project (de novo review), except as provided in paragraph (2) below.

   2. For appeals of Design Review decisions, the review authority may take action only on design-related issues.

F. Public Comment.\(^33\) The review authority may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.

G. Action.\(^34\)

   1. At the appeal hearing, the review authority may:
      a. Continue the public hearing; or
      b. Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or

   2. The City Council may also remand the matter to the ZAB to reconsider the application, and/or any revisions to the application submitted after the review authority’s action.

H. Criteria for Decision.\(^35\)

   1. When acting on an appeal, the appeal review authority shall use the same decision-making criteria and shall make the same findings as the prior review authority.\(^36\)

\(^{27}\) Source: 23E.12.050.C; 23E.12.060.B.

\(^{28}\) New. Reflects Department procedures

\(^{29}\) New.

\(^{30}\) Replaces detail in 23B.32.060.B with term “administrative record.”

\(^{31}\) Clarifies 23B.32.060.C

\(^{32}\) Clarifies 23B.32.060.D.2 that de novo review applies to all appeals except for Design Review appeals.

\(^{33}\) Clarifies 23B.28.060.D applies to all appeals.

\(^{34}\) Source: 23B.32.060. Removes reference to possible reconsideration of application without a public hearing.

\(^{35}\) Source: 23B.32.060. Clarifies these instructions apply to all appeals, not just Use Permits.

\(^{36}\) 23B.04.020C
2. The review authority’s action shall be based upon findings of fact about the appeal and shall identify the reasons for action on the appeal. In doing so, the appeal review authority may adopt the prior review authority’s decision and findings as its own.

I. Timeframe for Action.

1. **Use Permit and Variance Appeals.** If the City Council does not act on a Use Permit or Variance appeal within 30 days from the date the public hearing was closed by the City Council, then the decision of the ZAB shall be deemed affirmed and the appeal denied.  

2. **Other Appeals.** There is no time limit for the City to act on appeals of all other decisions.

J. **Board Action on Remand.**

1. A ZAB decision on an appeal remanded by the City Council may be appealed in the normal manner unless otherwise directed by the City Council.

2. If the ZAB does not act within 90 days after an appeal is remanded by the City Council, the original appeal of the ZAB’s decision shall be placed back on the Council agenda in the same manner as a new appeal.

K. Effective Date of Appeal Decisions.

1. **City Council Decision.** The City Council’s decision on an appeal is final and shall be effective on the date the decision is made.

2. **ZAB Decisions.** Decisions on appeals made by the ZAB becomes effective 14 days after the mailing of the Notice of Decision.

#### 23.410.050 – CITY COUNCIL CERTIFICATIONS

**Potential Phase 2 Amendment:**

**G-6:** Council Certifications. Eliminate the ability for the Council to certify ZAB and LPC decisions.

**G-7:** Calls for Review. Change the name of Council Certifications to Calls for Review.

**A. Purpose.** Certification is an action by the City Council to review a decision by the ZAB or LPC.

**B. Eligible Actions.** The City Council may certify the following actions for review:

1. Decisions of the ZAB on Use Permit and Variance applications.

2. Decisions of the LPC on historic resource designations for Green Pathway projects in accordance with Section 23B.34.030.

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37 Source: 23B.32.060.G  
38 Source: 23B.32.070  
39 Source: 23B.32.060.B.H  
40 New
3. Any LPC historic resource designation

C. Initiation.

1. Any Council member may initiate the certification process by submitting a written request to the City Clerk within:
   a. 14 days from the mailing of the Notice of Decision for Zoning Adjustment Board decisions; and
   b. As required by Section 3.24.190 (Council certification authorized when – Effect) for Landmarks Preservation Commission decisions. 

2. Certification shall not require any statement of reasons or justification and shall not represent opposition to or support of an application.

D. Effect of Certification. After initiating certification, any action on the associated project is suspended until City Council review is completed.

E. Hearing and Decision. Certified actions shall be reviewed by the City Council at a noticed public hearing in the same manner as for appeals as described in Section 23.04.020 (Hearing and Decision).

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41 Source: 3.24.190
42 Clarifies 23B.32.080
23.412

ZONING ORDINANCE AMENDMENTS

Sections:
23.412.010 – Purpose
23.412.020 – Initiation
23.412.030 – Application
23.412.040 – Planning Commission Hearing and Action
23.412.050 – City Council Hearing and Action
23.412.060 – Findings for Approval
23.412.070 – Limitations on Resubmittals after Denial
23.412.080 – Zoning Map Amendments

23.412.010 – PURPOSE

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

23.412.020 – INITIATION

A. Zoning Map Amendment. A Zoning Map amendment may be initiated by:
   1. Resolution of the City Council or Planning Commission; or
   2. Application of one or more owners of the property for which the amendment is sought.

   B. Zoning Ordinance Text Amendment. A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

23.412.030 – APPLICATION

An application for a Zoning Map Amendment submitted by a property owner shall be filed and reviewed in compliance with Section 23.404.020 (Application Submittal and Review). The application shall include the information and materials required by the Planning and Development Department, together with all required application fees.

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1 Reference to Government Code is new.
3 Re-writes second sentence of 23A.20.020.B.2 for clarity. Clarifies that application requirements apply only to applications submitted by property owner, not City-initiated amendments.
23.412.040 – PLANNING COMMISSION HEARING AND ACTION

A. Public Hearing. The Planning Commission shall hold a public hearing on a proposed Zoning Ordinance Amendment in compliance with Section 23.404.040 (Public Notice).

B. Planning Commission Recommendation.

1. The Planning Commission may recommend that the City Council approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.040 (Findings for Approval).

2. A recommendation for approval shall be made by a majority vote of the total membership of the Planning Commission.

3. If the Planning Commission recommends denial of a Zoning Map amendment, the City Council is not required to take further action on the proposed amendment unless the City receives a written request from an interested party for a City Council hearing within ten days after the Planning Commission action.

C. Recommendation Expiration.

1. A Planning Commission recommendation shall expire and have no further effect if the City Council takes no action on a proposed Zoning Ordinance Amendment within six months after the date the Planning Commission approved the recommendation.

2. The City Council may extend the effective period of a Planning Commission recommendation for up to an additional 18 months.

D. Effect of Recommendation. The Department may not accept any application that conflicts with a Planning Commission recommendation on a proposed Zoning Ordinance Amendment prior final to City Council action on the proposal.

23.412.050 – CITY COUNCIL HEARING AND ACTION

A. Public Hearing.

1. After receiving the Planning Commission’s recommendation, the City Council shall hold a public hearing on the proposed Zoning Ordinance Amendment in compliance with Section 23.404.030 (Public Hearings and Decisions) in the following circumstances:

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6 Revises 23A.20.050.A which states no use or structure may be established that conflicts with Planning Commission recommendation.
a. The proposed Zoning Map amendment would apply to a larger area or additional properties than previously considered by the Planning Commission.

b. The proposed new zoning classification would be different from that previously considered by the Planning Commission;

c. Any written protests have been filed with the Secretary of the Planning Commission or the City Clerk;

2. The City Council may choose but is not required to hold a public hearing on any proposed Zoning Ordinance amendment not identified in prior Paragraph (1)

B. Council Action.

1. The City Council may approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).

2. The action by the City Council shall be made by a majority vote of the total membership of the City Council.

C. Referral to Planning Commission.

1. If the City Council proposes to adopt a substantial modification to the Zoning Ordinance Amendment not previously considered by the Planning Commission, the proposed modification shall be first referred to the Planning Commission for its recommendation.

2. The failure of the Planning Commission to report back to the City Council within 40 days after the reference, or within the time set by the City Council, shall be deemed a recommendation of approval.

D. Effective Date.8 Zoning Ordinance Amendments become effective 30 days after the adoption of the ordinance by the City Council.

23.412.060 – Findings for Approval9

The City Council may approve a Zoning Ordinance Amendment only if all of the following findings are made:

A. Findings for all Zoning Ordinance Amendments.

1. The proposed amendment is consistent with the State law, the General Plan and any applicable specific plan or area plan.

2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.

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8 Removes from 23A.20.060.C immediate effective date of “more restrictive” ordinances.
9 New.
B. Additional Finding for Zoning Ordinance Text Amendments. The proposed amendment is internally consistent with other applicable provisions of the Zoning Code.

C. Additional Finding for Zoning Map Amendments. The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Ordinance and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.

23.412.070 – LIMITATIONS ON RESUBMITTALS AFTER DENIAL

A. One-Year Prohibition. If the City denies a Zoning Map Amendment, the City may not accept a resubmitted application for the same or substantially similar Zoning Map Amendment within one year from the date of denial, unless:

1. The original application is denied without prejudice; or
2. The City Council allows resubmittal within six-months of denial as allowed by Subsection B (Six-Month Exception) below.

B. Six-Month Exception.

1. The City Council may allow a resubmitted application within six months from the date of denial if the Council finds that:
   a. Changed circumstances in relation to the property warrant early resubmittal, and
   b. Any property owner objections to the original application have been withdrawn.

   The burden rests with the applicant to submit evidence and demonstrate that the findings in prior sub-paragraph 1 (Six-Month Exception) can be made.

23.412.080 – ZONING MAP AMENDMENTS

All adopted amendments to the Zoning Map shall be noted on the map with the date and number of the amending ordinance.

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10 Revises 23A.20.080 to allow resubmittals if denied without prejudice.
11 Stylistic edits to second sentence of 23A.20.010.
23.414

NUISANCE ABATEMENT

Sections:
23.414.010 – Purpose
23.414.020 – Enforcement Responsibility
23.414.030 – Violations a Misdemeanor
23.414.040 – Nuisances Prohibited
23.414.050 – City Attorney Action
23.414.060 – Abatement Procedures
23.414.070 – Statements of Violations
23.414.080 – Remedies
23.414.090 – Recovery of Costs
23.414.100 – Private Right of Action

Potential Phase 2 Amendment:
F.3: Nuisance Abatement. Remove the nuisance abatement chapter from the Zoning Ordinance and integrate with generally applicable nuisance abatement provisions in Municipal Code Chapter 1.24 (Abatement of Nuisances)

23.414.010 – PURPOSE
This chapter establishes procedures to abate public nuisances associated with land uses, structures, and events as regulated by the Zoning Ordinance. These procedures supplement generally applicable code enforcement provisions in Municipal Code Title 1 (General Provisions).

23.414.020 – ENFORCEMENT RESPONSIBILITY
The City Manager, or his or her designee, shall enforce the requirements of this chapter.¹

23.414.030 – VIOLATIONS A MISDEMEANOR
Any violation of the Zoning Ordinance is a misdemeanor but may be cited or charged, at the City’s discretion, as an infraction. In all other respects, the provisions of Municipal Code Chapter 1.20 (General Penalty) shall apply.²

¹ Stylistic edits to 23B.64.010D.
² Stylistic edits to 23B.64.010F.
23.414.040 – NUISANCES PROHIBITED

A. Public Nuisance Prohibited. A land use, structure, or event shall not cause a public nuisance as defined in Subsection (B) below.³

B. Public Nuisance Defined.⁴ A use, structure, or event that meets any of the following criteria is a public nuisance.

1. Any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests, or any other activity declared by the City to be a public nuisance.

2. A violation of any City, state, or federal ordinance, law, or regulation.

3. A use or activity, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three Berkeley Police Department patrol officers at any other time, to quell such disturbance.

23.414.050 – CITY ATTORNEY ACTION⁵

A. Immediate Action. The City Attorney may take immediate action to abate, remove, and enjoin a public nuisance in the manner provided by law.

B. Judicial Relief. To abate a public nuisance, the City Attorney may apply for relief from the courts to:

1. Remove a use or structure;

2. Prevent the establishment of a use or structure;

3. Prevent the continued operation of a use or structure; or

4. Prevent the removal or demolition of a structure.

23.414.060 – ABATEMENT PROCEDURES

A. Initiation.⁶

1. Proceedings to abate a nuisance may be initiated by a referral by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council.

³ Stylistic edits to 23B.64.010A. 23B.64.010E moved to the Introductory Provisions chapter in Division I.
⁴ Stylistic edits to 23B.64.020
⁵ Stylistic edits to 23B.64.010B
⁶ Stylistic edits to 23B60.030.A
2. All referrals shall identify the subject property, the nature of the violation, and the reason for the proposed abatement.

3. A referral by ZAB shall identify the public hearing date for the matter. All other referrals shall have a public hearing date set by the Zoning Officer

B. ZAB Recommendation.

1. Public Hearing.  

   a. The ZAB shall hold a public hearing on the proposed abatement in compliance with Section 23.404.080 (Public Notice for ZAB Hearings).

   b. The Department shall provide notice of the hearing to the property owner, property occupants, the person who requested proceedings under this chapter (if any), and any person who has filed written request of notice.

2. Recommendation.  

   a. The ZAB shall recommend that the City Council determine whether a nuisance exists and, if so, the appropriate remedy.

   b. The ZAB recommendation shall be:

      i. Based on the evidence, testimony, and facts presented to the ZAB at the hearing;

      ii. Supported by written findings; and

      iii. Issued within 35 days after the conclusion of the hearing.

3. Final Decision. A ZAB recommendation to abate a nuisance shall be deemed a final decision if the property owner consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

4. Report to City Clerk. The Department shall file the ZAB’s recommendation with the City Clerk within 14 days following the recommendation. The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

C. City Council Action.

1. Public Hearing. The City Council shall hold a public hearing on the proposed abatement in compliance with Section 23.404.080 (Public Notice for ZAB Hearings). The hearing shall occur within:

   a. 60 days of the ZAB recommendation if the ZAB recommends abatement; and

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7 Stylistic edits to 23B60.030.B&C
8 Stylistic edits to 23B64.040
9 Stylistic edits to 23B64.050A
10 Stylistic edits to 23B64.050B
11 Stylistic edits to 23B.64.050B,C&D
b. 30 days of the City Clerk report to the City Council of the ZAB decision.

2. **Decision.** After hearing, the City Council may find that the use, structure, or event constitutes a public nuisance and may impose any remedy provided for in this chapter, or take no action.

**D. Notice of Decision.**

1. If the City Council makes a nuisance determination, the City Clerk shall issue a Notice of Decision describing the City Council’s action, with its findings.

2. The City Clerk shall mail the notice to any permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.

3. The City Clerk shall file a copy of the Notice of Decision with the Zoning Officer.

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**23.414.070 – STATEMENTS OF VIOLATIONS**

**A. Statement Filed with County Recorder.**

1. If a person does not comply with an order of the Zoning Officer to correct a violation of this chapter within the specified time as provided in Chapter 1.24 (Abatement of Nuisances), the City may file a statement in the Office of the County Recorder that:

   a. Describes the property and nature of the violation; and

   b. Certifies that the property violates this chapter and that the owner has been so notified.

2. The City shall record proof of service with the filed notice and order.

**B. Statement Filed after Correction.** When a violation is corrected, the Zoning Officer shall file a new statement with the County Recorder certifying that the property is no longer in violation of this chapter.

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**23.414.080 – REMEDIES**

**A. Potential Remedies.** If the City makes a nuisance determination, the City may impose any of the following remedies:

1. Enjoin the use in whole or in part.

2. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.

3. Require continued compliance with newly imposed any conditions.

4. Require the permit holder to guarantee compliance with newly imposed conditions.

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12 Stylistic edits to 23B.64.050E.
13 Stylistic edits to 23B.64.010G
14 Stylistic edits to 23B.64.060.
B. **Administrative Penalty.** In addition to or as an alternative to any other remedy, the City may impose an administrative penalty of up to $10,000 jointly and severally on persons responsible for the nuisance and/or the property owner. The City may also impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessary to address continuing and unabated public nuisances once the City Council has determined that a public nuisance exists.

C. **Remedies Are Cumulative.** The procedures and remedies in Subsections (A) and (B) above are cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.\(^{15}\)

### 23.414.090 – RECOVERY OF COSTS

A. **Abatement Proceedings.**

1. The City may recover the costs to administer abatement proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Sub-paragraph (2) below.

2. The hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a decision is mailed. The Council shall hold a hearing on appeals as specified in Section 1.24.180.

B. **Remedies.**

1. If the City imposes a remedy authorized in Section B (Remedies), the City may recover costs for time spent administering the remedy.

2. Payment of City costs shall be a condition of continued operation of a use or structure subject to a remedy.

3. Payments submitted under this Paragraph 2 (Remedies) shall be deducted from any payments submitted under Paragraph 1 (Abatement Proceedings) above.

### 23.414.100 – PRIVATE RIGHT OF ACTION\(^ {16} \)

A. **General.** Any resident of the City may bring a private action in a court of law for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this chapter.

B. **Prior Notice Required.** No action may be brought under this section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.

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\(^{15}\) Stylistic edits to 23B64.010C

\(^{16}\) Stylistic edits to 23B68.
C. Recovery of Costs. In any action prosecuted under this section a prevailing plaintiff may recover reasonable attorneys’ fees.
Sub-Title 23A
ORDINANCE APPLICABILITY

Chapters:

23A.04 TITLE, ADOPTION AND PURPOSES
23A.08 INTERPRETATION AND CONSTRUCTION OF ORDINANCE
23A.12 GENERAL REGULATIONS
23A.16 ZONING MAPS, DISTRICTS AND BOUNDARIES
23A.20 ZONING ORDINANCE AMENDMENTS
23A.24 APPLICABILITY, EMERGENCIES, INTERPRETATION, SEVERABILITY, RULES OF EVIDENCE AND PROCEDURE
Chapter 23A.20

ZONING ORDINANCE AMENDMENTS

Sections:
- 23A.20.010 Amendments
- 23A.20.020 Initiation
- 23A.20.030 Consideration by Planning Commission
- 23A.20.040 Planning Commission Action Forwarded to City Council
- 23A.20.050 Effect of Planning Commission Action
- 23A.20.060 Consideration By City Council
- 23A.20.070 Effect of Council Approval
- 23A.20.080 Resubmittal of Petition for Reclassification

Section 23A.20.010 Amendments

This Ordinance and the Official Zoning Map may be amended as set forth herein. All amendments to the Official Zoning Map shall be noted thereon with the date and number of the amending Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.020 Initiation

A. Amendments to the text of the Zoning Ordinance may be initiated by resolution of the Planning Commission or the City Council which contains a general description of the proposed regulations, whether they are new provisions, amendments to existing provisions, repeal of existing provisions or some combination thereof.

B. Amendments to the Official Zoning Map may be initiated in either of the two following ways:

1. A reclassification may be initiated by resolution of the Planning Commission or the City Council which describes the present District classification of the affected property or properties, the proposed District classification and refers to an attached map that illustrates the affected property or properties.

2. A reclassification may be initiated by a written petition of the record owner or owners of the property affected by the proposed reclassification, by a purchaser thereof under a contract in writing duly executed and acknowledged by both the buyer and seller, by a lessee in possession of the property with the written consent of the owner of record of the legal title to make such application or by the agent of any of the foregoing duly authorized thereto in writing, on a form furnished by the Secretary of the Planning Commission. The petition shall contain such information as may be required by the Commission, shall be filed with the Secretary of the Commission, and shall be accompanied by a fee as set by resolution of the City Council.

Commented [BN1]: Big picture comment/question. There is a lot in this chapter that is different from what I'm familiar with and seems to me to conflict with state law in places. Is there come background/history relating to the City's zoning ordinance amendment process I should be aware of?

Commented [PA2R1]: STAFF RESPONSE: I don't know the source of these discrepancies. But one of ZORP's goals is to bring the ZO into compliance with State Regs.

Commented [BN3]: Does the City allow a development project applicant to request a zoning text amendment?

Commented [PA4R3]: STAFF RESPONSE: No
Council. In the event of a reclassification initiated by petition, the costs of notifying persons, as set forth below, shall be borne by the petitioner(s).

C. In addition, the Planning Commission may initiate a text amendment or reclassification without holding a public hearing upon the affirmative vote of six members. Amendments so initiated shall be effective immediately, for sixty (60) days, after which time they shall cease to be effective if no public hearing has been held and no action has been taken to adopt the amendment. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.030 Consideration by Planning Commission

A. All text amendments and reclassifications shall be referred to the Planning Commission, which shall consider them at a public hearing within thirty (30) days after adoption of the resolution initiating them or filing of the petition, as the case may be.

B. Prior to the Planning Commission's consideration of any proposal for reclassification, the Secretary of the Commission shall prepare a Notice of Public Hearing containing a written summary describing the proposed reclassification, including a description of the present District classification of the affected property, the proposed District classification and an attached map that illustrates the affected property. The notice shall also state how to obtain further information, how to submit written comments, and information on the time and location of the public hearing.

1. When a land area involved in the proposed reclassification is less than five (5) acres, the Notice of Public Hearing described above shall be posted at three (3) visible locations in the vicinity of the subject property or properties involved not fewer than fourteen (14) days prior to the date of the hearing; and by mailing a notice to each owner of property involved, to resident tenants and to neighborhood organizations, and within three hundred (300) feet of any part of the subject property or properties, not fewer than fourteen (14) days prior to the date of such hearing;

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

C. Failure of any property owner to receive a mailed notice or to observe a posted or published notice shall not affect the validity of any proceedings held in conformity with the provisions of this Section.

D. Planning Commission hearings shall be open to the public and all persons shall be given the opportunity to present their views and to be heard. Any person or persons desiring to be heard on any proposed reclassification may file with the Secretary of Planning Commission a notice of intention to speak at the hearing.
the Commission a statement in writing or may present it verbally at said hearing. The Commission may continue any hearing under this Chapter from time to time.

E. The Commission may make a field investigation if it deems such course expedient, and from such investigation and from the hearing shall prepare a report setting forth a general summary of the facts and conditions involved in the reclassification.

F. After the Commission has conducted a public hearing, it may vote to adopt, modify or reject the initiated amendment or reclassification. (Ord. 7323-NS § 4, 2014; Ord. 6478-NS § 4 part), 1999)

Section 23A.20.040 Planning Commission Action Forwarded to City Council

Any text amendment or reclassification initiated by the Planning Commission, along with a report of the Commission's action thereon and all the information presented to the Commission, shall be forwarded to the City Council for final consideration within thirty (30) days of the date of the Commission's action, and shall be considered by the Council not more than sixty (60) days after receipt of said document from the Secretary of the Commission by the City Clerk. (Ord. 6478-NS § 4 part), 1999)

Section 23A.20.050 Effect of Planning Commission Action

A. An amendment or reclassification adopted by the Planning Commission shall remain in effect for a period of six (6) months from the date on which it was adopted. This period of time can be extended by the City Council for a period or periods of time not to exceed an additional eighteen (18) months or no more than a total of twenty-four (24) months maximum. If the City Council neither adopts the amendment or reclassification within the above time periods nor extends the time periods, then the amendment or reclassification shall expire and have no further effect.

B. During any period set forth above in which an amendment or reclassification is effective, it shall apply immediately to any use which has not yet lawfully commenced and to any building on which lawful construction has not yet started. (Ord. 6478-NS § 4 part), 1999)

Section 23A.20.060 Consideration By City Council

A. The City Council may approve, modify or reject a proposed amendment or any part thereof without holding a public hearing, but may set the matter for a public hearing if it so chooses.

B. The City Council shall hold a public hearing, and the City Clerk shall provide notice in the same manner as required for Planning Commission hearings on reclassifications under any of the following circumstances:

1. A larger area, or additional properties, than were considered by the Planning Commission are proposed to be reclassified;

2. The District into which the properties are proposed to be reclassified is different from that previously approved by the Planning Commission;

3. Any written protests have been filed with the Secretary of the Planning Commission or the City Clerk;

4. It chooses to hold a public hearing.

C. City Council hearings shall be open to the public, and all persons shall be given the opportunity to present their views and to be heard. Any person or persons desiring to be heard on any proposed reclassification may file with the City Clerk a statement in writing or may present it verbally at said hearing. The Council may continue any hearing under this Chapter from time to time. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.070 Effect of Council Approval

A. Provisions of any amendment or reclassification which are more restrictive than the provisions they replace become effective immediately.

B. Provisions of any amendment or reclassification which are less restrictive than the provisions they replace do not become effective until the Ordinance containing the amendments becomes effective, namely, thirty (30) days after the second reading of the Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.20.080 Resubmittal of Petition for Reclassification

A. Whenever a reclassification initiated by petition has been denied by the City Council, no petition to reclassify the same property or properties to the same District shall be filed within one (1) year from the date of the denial of the original petition, except that the Council may, at its discretion, permit the filing of a new petition at any time after six (6) months from the date of the denial of the original petition.

B. Any request to the City Council to file a new petition shall state that there are changed circumstances in relation to the property for which reclassification is sought and shall describe those circumstances, and shall be accompanied by written withdrawals by the property owners who previously objected to the reclassification.

C. If the City Council denies permission to file a new petition or after granting such permission refuses to reclassify the property, no new petition to reclassify the same property or properties to the same District shall be filed within one (1) year from the date of the denial of the original petition. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23A.24

APPLICABILITY, EMERGENCIES, INTERPRETATION, SEVERABILITY, RULES OF EVIDENCE AND PROCEDURE

Sections:

23A.24.010 Applicability
23A.24.020 Emergencies
23A.24.030 Interpretation and Effect
23A.24.040 Rules of Evidence and Procedure

Section 23A.24.010 Applicability
A. This Ordinance applies to all property in the City of Berkeley, including property owned by the City of Berkeley and other jurisdictions and governmental entities, to the full extent permitted by law.
B. This Ordinance does not apply to uses or structures wholly within or on properties constituting the public right-of-way unless otherwise specifically provided. Such uses or structures shall, however, be subject to the Encroachment Permit regulations set forth in Chapter 16.18. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.020 Emergencies
A. The City Council may, without compliance with the notice or other procedures required by this Ordinance, permit the establishment of a use or the construction of a structure or building that is required to ameliorate the effects of the emergency, without the issuance of a Use Permit or Variance, if, by the same vote as is required for the adoption of an urgency Ordinance:
   1. It finds or has determined that an emergency exists as defined in Section 2.88.020; and
   2. It finds that the use or structure is required to ameliorate the effects of emergency.
B. Action by the Council under this Section is effective immediately.
C. Upon the end of the emergency, as declared by the City Council, any and all uses and structures permitted under this section shall cease to be authorized. Such uses or structures shall either be removed, discontinued or become subject to all the provisions of this Ordinance, including all permit requirements. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.030  Interpretation and Effect

A. The requirements established by this Ordinance are the minimum requirements necessary to promote the public health, safety, comfort, convenience and general welfare.

B. Except as specifically herein provided, this Ordinance does not repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or Ordinance or any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the erection, construction, establishment, moving, alteration or enlargement of any building or improvement.

C. Except as otherwise provided herein, no provision of this Ordinance shall be construed as relieving any party to whom a Use Permit or Variance is issued from any requirement of state or federal law, or from any provision, Ordinance, rule, subdivision approval or regulation of the City requiring a license, franchise or permit to accomplish, engage in, carry on or maintain a particular business, enterprise, occupation, transaction or use.

D. This Ordinance does not interfere with or abrogate or annul any easement, covenant or other agreement between parties. However, in cases in which this Ordinance imposes a greater restriction than by such easement, covenant or agreement, then the provisions of this Ordinance shall control.

E. If any Chapter, Section, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of this Ordinance, which shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance and each Chapter, Section, sentence, clause and phrase hereof, irrespective of the fact that any one (1) or more Chapters, Sections, sentences, clauses or phrases be declared invalid or unconstitutional. (Ord. 6478-NS § 4 (part), 1999)

Section 23A.24.040  Rules of Evidence and Procedure

Except as otherwise expressly provided in this Ordinance, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply. No action, inaction or recommendation made by any City official, employee, commission, board or other entity under this Ordinance shall be void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no

Commented [BN34]: I suggest we have the City Attorney look at this section and advise on whether this needs to remain in the code as written, remain with modifications, or removed. This kind of a statement is not typically included in a zoning code.

Commented [PA35R34]: STAFF RESPONSE: City Attorney will review the BZO and we can flag this section at that point.
presumption that error is prejudicial or that injury was done if error is shown. (Ord. 6478-NS § 4 (part), 1999)
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### Sub-Title 23B

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**Commented [BN1]:** Are there any portions of this sub-title subject to a voter-approved ordinance? I don’t think so, but please confirm.

**Commented [PA2R1]:** STAFF RESPONSE: Indirectly Neighborhood Preservation Ordinance (NPO).

**Commented [BN3]:** Should Chapter 3.28 (Planning Commission) be moved into the Zoning Ordinance?

**Commented [PA4R3]:** STAFF RESPONSE: No. PC doesn’t administer the ZO.
Chapter 23B.04
ZONING ADJUSTMENTS BOARD

Sections:
23B.04.010 Zoning Adjustments Board Membership
23B.04.020 Responsibilities and Powers of the Board

Section 23B.04.010 Zoning Adjustments Board Membership
A. The City shall establish and maintain a Zoning Adjustments Board, hereafter referred to as the Board, to administer the provisions of this Ordinance as herein provided. Decisions of the Board may be appealed to the City Council, as set forth herein.
B. The Board shall consist of nine (9) members, appointed by Council members and the Mayor in accordance with Chapter 2.04 of the BMC. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.04.020 Responsibilities and Powers of the Board
A. The Board shall elect a Chairperson and Vice Chairperson. The Board shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.
B. The Board shall have power to:
1. Grant, deny, conditionally approve or modify applications for Use Permits and Variances;
2. Hear appeals of decisions to the Zoning Officer with respect to Administrative Use Permits and other matters, as authorized by this Ordinance;
3. Review, modify or revoke previously issued Use Permits and Variances;
4. Undertake other proceedings to enforce this Ordinance, including abatement of public nuisances;
5. Refer matters within its jurisdiction to a mediation or conflict resolution service, as set forth herein, prior to final action on them;
6. Upon request, make recommendations on other matters brought to its attention by the Council, the Planning Commission or any other City Board or Commission; and
7. Adopt written regulations not inconsistent with this Ordinance for the administration of this Ordinance. Such regulations shall be available to the public.

Commented [BNS]: 23B.04.010 states permits are revoked by the Council with recommendation from the Board. Please confirm the ZAB does not have the authority to revoke a Use Permit or Variance.

Commented [PA6R5]: STAFF RESPONSE: Although not common, ZAB has revoked permits in the past.

Commented [BN7]: Please confirm the only role the Board has to enforce the Zoning Ordinance is to recommend to the Council permit revocation and nuisance determination.

Commented [PA8R7]: STAFF RESPONSE: Although not common, ZAB has revoked permits in the past.

Commented [BN9]: Has the Board done this? Does it really have this power? Perhaps this should say "adopt guidelines and procedures consistent with the Zoning Ordinance"?

Commented [PA10R9]: STAFF RESPONSE: Administrative Regulations can be adopted by ZAB and are available to the public.
C. When reviewing any decision of the Zoning Officer on appeal, the Board shall use the same standards for decision making and is required to make the same findings as the Zoning Officer with respect to the matter on appeal. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.08
DESIGN REVIEW COMMITTEE

Sections:

23B.08.010 Design Review Committee
23B.08.020 Responsibilities and Powers of the Design Review Committee

Section 23B.08.010 Design Review Committee

A. The City shall establish and maintain a Design Review Committee as a committee of the Zoning Adjustments Board, hereafter referred to as the Committee, to administer Chapters 23E.08 and 23E.12.

B. The Committee shall include seven (7) members, as follows:
   1. Two (2) members of the Zoning Adjustments Board;
   2. One (1) member of the Landmarks Preservation Commission (LPC);
   3. One (1) member of the Civic Arts Commission (CAC); and
   4. Three (3) members of the public who are residents of the City.

C. Members from Boards and Commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the Board. The membership of the Committee shall include a minimum of two (2) licensed architects, one (1) licensed landscape architect and two (2) laypersons, defined for the purposes of this section as a person who is neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture. (Ord. 6969-NS § 1, 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.08.020 Responsibilities and Powers of the Design Review Committee

A. The Committee shall elect a Chairperson and Vice Chairperson, adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

B. The Committee shall consider applications for Design Review and either approve, modify or deny such applications, pursuant to Chapters 23E.08 and 23E.12.

C. Decisions of the Committee may be appealed to the Board, by the procedures set forth in Chapter 23E.12.

D. Upon request, the Committee may make a recommendation on matters brought to its attention by the Board, the Planning Commission, the Council or any other City Board.

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or Commission. Such recommendations shall be limited to the subject areas of its expertise.

(Ord. 6478-NS § 4 (part), 1999)

Commented [BN16]: Okay to clarify this means “building and site design”?

Commented [PA17R16]: STAFF RESPONSE: Yes.
Chapter 23B.12

ZONING OFFICER

Sections:

23B.12.010 Zoning Officer
23B.12.020 Responsibilities and Powers of the Zoning Officer
23B.12.030 Secretary to the Zoning Adjustments Board
23B.12.040 Secretary to the Design Review Committee

Section 23B.12.010 Zoning Officer
A. The City Manager shall designate an employee to act as Zoning Officer.
B. The Zoning Officer, or his/her designee, shall act as the Secretary to the Zoning Adjustments Board and the Design Review Committee. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.12.020 Responsibilities and Powers of the Zoning Officer
A. The Zoning Officer has the authority to:
   1. Make determinations as to zoning conformity and staff-level design review decisions;
   2. Issue Zoning Certificates as set forth in Chapter 23B.20;
   3. Issue Administrative Use Permits to the extent provided in this Ordinance;
   4. Interpret and enforce this Ordinance, subject to the review by the Board and Council;
   5. Issue written regulations not inconsistent with this Ordinance for the administration of this Ordinance;
   6. Refer applications for Use Permits to a mediation or conflict resolution service, as set forth in herein;
   7. Request legal opinions from the City Attorney on legal questions regarding pending applications. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.12.030 Secretary to the Zoning Adjustments Board
The Zoning Officer, or his/her designee, shall act as Secretary to the Board and shall present to the Board applications for Permits or modifications thereto, and shall prepare Staff reports on those applications. The Secretary shall advise the Board on the

Commented [BN18]: "Any employee" or a "Planning and Development Department employee"?
Commented [PA19R18]: STAFF RESPONSE: Yes

Commented [BN20]: Is this a formal determination or just part of day-to-day interpreting and administering the Zoning Ordinance?
Commented [PA21R20]: STAFF RESPONSE: Both

Commented [BN22]: What exactly does "written regulations" mean? Administrative procedures?
Commented [PA23R22]: STAFF RESPONSE: Broad term to include site determinations, zoning interpretations, administrative regs and procedures.

Commented [BN24]: Should this say Administrative Use Permits?
Commented [PA25R24]: STAFF RESPONSE: Staff uses UP for AUPs and UPs. For consistency moving forward, explicitly list both permit types.

Commented [BN26]: Okay to delete this?
Commented [PA27R26]: STAFF RESPONSE: Leave as this is the expected communication/request protocol.
Section 23B.12.040 Secretary to the Design Review Committee

The Zoning Officer, or his/her designee, shall act as Secretary to the Design Review Committee, and administer staff-level design review, as provided in Chapters 23E.08 and 23E.12. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.16

USE OF CONFLICT RESOLUTION OR MEDIATION SERVICE

Sections:

23B.16.010 Conflict Resolution and Mediation
23B.16.020 Rules and Expectations of the Conflict Resolution/Mediation Process

Section 23B.16.010 Conflict Resolution and Mediation

The Zoning Adjustments Board or the Zoning Officer may refer an applicant and other persons affected by a pending application to a conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the Board or the Zoning Officer to any result. A referral may be made either before or after a public hearing on a pending Permit decision, but only after an application is deemed complete by the Zoning Officer. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences. It is the policy of the City to encourage applicants and neighbors to have early discussions on proposed projects so that differences may be resolved prior to the submission of an application. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.16.020 Rules and Expectations of the Conflict Resolution/Mediation Process

Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, prior to beginning the process.

A. The goal of mediation is to seek a mutually agreeable result for the pending application.
B. Participation for the applicant and others parties is strictly voluntary.
C. All participants shall be made aware that there is no need to come to an agreement.
D. The Board or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process; the mediator may ask the Board or the Zoning Officer for a clarification of these issues from time to time.
E. City Staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Ordinance.
F. The mediation service will provide the Board or the Zoning Officer with a report as to the result of the mediation within forty-five (45) days of the referral.

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G. If no agreement between the parties is reached within forty-five (45) days, or at any time that the mediator indicates that further meetings between parties is futile, the Board or Zoning Officer shall take up the matter themselves, except that if the parties to the mediation/conflict resolution agree to continue the mediation process, it may be extended for an additional time period not to exceed forty-five (45) days. Unless the applicant expressly waives his or her rights hereunder in conformance with law, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by State law.

H. Participants in mediation should be aware that the Board cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Ordinance requires that a project must meet all minimum Ordinance requirements and any other applicable City Ordinances and regulations.

I. Results of the mediation will in no way be binding upon the Board, and the Board may approve, deny or modify any aspect of any mediated agreement.

J. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by his or her decision, but may change his or her mind after the mediation.

K. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the Board decision to the Council.

L. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of a Use Permit or Variance, shall be enforceable by the City. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.20
ZONING CONFORMANCE REVIEW

Sections:

23B.20.010 General Regulations
23B.20.020 Zoning Conformance Review
23B.20.030 Determination Limited to Application
23B.20.040 Zoning Certificates
23B.20.050 Application and Fee
23B.20.060 Issuance of Zoning Certificates

Section 23B.20.010 General Regulations
The Zoning Certificate serves as a record of the initial establishment of a use, or the construction of a structure, which is allowed as a matter of right. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.020 Zoning Conformance Review
Prior to obtaining any business license, building Permit or subdivision or lot line adjustment, the applicant shall request the Zoning Officer to determine whether the use, building or lot change complies with all provisions of the Ordinance, any applicable Use Permit and that all Use Permit conditions have been satisfied. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.030 Determination Limited to Application
A Zoning Certificate extends only to the building, structure, use, subdivision or lot line adjustment shown in the application for zoning conformance review, and does not in any way validate or constitute approval of any building, structure, use, subdivision or lot line adjustment not shown in the application. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.040 Zoning Certificates
Zoning Certificates shall be required for buildings or structures erected, constructed, altered, repaired or moved, the use of vacant land, changes in the character of the use of land or building, or for substantial expansions in the use of land or building, which are allowed as a matter of right by this Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.050 Application and Fee
A. Applications and fees for Zoning Certificates shall be submitted in accordance with the provisions set forth in Chapter 23B.24. The Zoning Officer may review applications

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referred from other City Departments and Divisions, including but not limited to, applications for building Permits and business licenses and require that applicants submit Zoning Certificate applications, and additional information as needed. No fee shall be required in cases where the legal use of property or building is unchanged and no building alterations occur.

B. The Zoning Officer shall determine whether proposed uses or structures are allowed by right under this Ordinance. No Zoning Certificate shall be required for continuations of previously approved or permitted uses and structures, uses and structures exempt under Chapter 23C.20 or other uses or buildings already subject to AUPs, Use Permits or Variances in the District in which they are located. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.20.060 Issuance of Zoning Certificates

A. Zoning Certificate shall be issued if the Zoning Officer determines that the proposed use or building is allowed as a matter of right by the Ordinance, and conforms to all the applicable development and use standards therein. An approved Zoning Certificate may include attachments of other written or graphic information, including but not limited to, statements, numeric data, site plans, floor plans and building elevations and Sections, as a record of the proposal’s conformity with the applicable regulations of this Ordinance.

B. If the construction of a building or structure or the use established is contrary to the description or illustration in the approved Zoning Certificate so as to either violate any provision of the Ordinance or require additional Permits, then the Zoning Certificate shall be deemed null and void.

C. A Zoning Certificate is deemed to have been exercised when either the approved use has been established at the subject premises or, in the case of construction, when a valid Building Permit, if required, has been issued for the approved building or structure and construction has commenced. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.24
APPLICATIONS FOR PERMITS

Sections:
23B.24.010 General Requirements
23B.24.020 Persons Who May File an Application
23B.24.030 Application Forms and Supporting Materials—Additional Information for Certain Projects
23B.24.040 Payment, Waiver and Refund of Application Fees
23B.24.050 Determination of Completeness of Applications
23B.24.060 Registry of Organizations to Receive Notice
23B.24.070 Summary Denial of Certain Applications

Section 23B.24.010 General Requirements
A. Application for any Permit required by this Ordinance shall be made to the Zoning Officer.
B. Applications shall designate one (1) person as the applicant. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.020 Persons Who May File an Application
A. The following persons may file applications:
1. The owner of the subject property;
2. An agent representing the owner, duly authorized to do so in writing;
3. A person with a duly executed written contract or exclusive option to purchase the subject property and duly executed written consent to the application by the present owner;
4. A lessee in possession of the subject property, with the written consent of the owner or the owner’s authorized designee; and
5. An agency having the right of instituting proceedings of eminent domain.
B. A lessee in possession of the subject property applying for a Zoning Certificate or Use Permit for a Home Occupation may file without the consent of the owner, provided that in the case of an application for a Use Permit for a Home Occupation, the owner of the property shall be given notice of the application. (Ord. 6478-NS § 4 (part), 1999)

Commented [BN69]: How do you handle projects requiring multiple permits? Typical is this: “An applicant for a development project that requires the filing of more than one application (e.g., Zoning Map Amendment and a Conditional Use Permit) shall file all related applications concurrently unless the concurrent filing requirements are waived by the Zoning Officer.

The Planning and Development Department shall process multiple applications for the same project concurrently. Projects requiring multiple permit applications shall be reviewed and acted upon by the highest review authority designated by the Zoning Code for any of the applications (e.g., a project requiring a Zoning Map Amendment and a Conditional Use Permit shall have both applications decided by the City Council, instead of the Planning Commission acting on the Conditional Use Permit).” Is this how you handle it?

Commented [PA70R69]: STAFF RESPONSE: Permits are sequenced when necessary, concurrent if possible. For example, a zoning map amendment would have to be processed prior to a Use Permit.

Commented [BN71]: Do you have any procedures for pre-application conferences that you would like codified?

Commented [PA72R71]: STAFF RESPONSE: No

Commented [BN73]: 23A.08.010 says the term “permit” means a Use Permit, AUP, or Variance, unless context requires otherwise. It seems to me this chapter applies more broadly to all permits and approvals required by the Zoning Ordinance for which an applicant must submit an application. Do you agree?

Commented [PA74R73]: STAFF RESPONSE: Agreed.

Commented [BN75]: Is this correct? Seems applications are submitted to the Planning and Development Department. I recommend being clear on the roles and responsibilities of the Zoning Officer vs. Department staff, even though technically the 20 to delegate responsibilities to Department staff.

Commented [PA76R75]: STAFF RESPONSE: PD Staff.

Commented [PA77]: STAFF COMMENT: ZC is not a “permit” and should not be referenced in this section.

Commented [BN78]: Who gives notice to owner? The applicant? If the applicant gives notice, does the applicant submit evidence of notice?

Commented [PA79R78]: STAFF RESPONSE: UP requires noticing. By default, property owner would get notice, along with all other neighbors within specified buffer.

Commented [BN80]: Address in Home Occupations
Section 23B.24.030  Application Forms and Supporting Materials--Additional Information for Certain Projects

A. Applications for Permits shall be made in writing on those forms provided by the Zoning Officer. The Zoning Officer may require supporting materials as part of the application, including, but not limited to, studies, reports, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project. All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection. The applicant shall be responsible for the accuracy and completeness of all application information submitted to the City.

B. A list of all pending applications for Permits shall be provided to the Landmarks Preservation Commission at every regular meeting thereof. Each property that is the subject of an application included in that list shall be placed on the agenda for potential initiation. In order to facilitate public notice, applicants shall post a conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the application involves has its major frontage prior to the date the application is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer. (Ord. 6939-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23B.24.040  Payment, Waiver and Refund of Application Fees

A. Applications for Permits shall be accompanied by the fees as set by resolution of the Council. Payment of the fee is required in order for an application to be complete under the Permit Streamlining Act (PSA), and absent payment of the fee, the application will not be processed unless a fee waiver or deferral is approved as set forth below.

B. No fee shall be required when the applicant is the City, or if it is waived under any other provision of the BMC.

C. In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver. A letter from the City Manager authorizing the fee waiver or deferral shall be submitted in lieu of a fee before an application will be accepted. Each fee waiver or deferral request shall include a breakdown of all applicable Current Planning Fees, as set forth in the current Fee Resolution.

D. If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the
Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for applications that have been denied. (Ord. 6478-NS § 4 (part), 1999)

**Section 23B.24.050 Determination of Completeness of Applications**

The Zoning Officer shall determine whether an application is complete. If it is not complete, the Zoning Officer shall advise the applicant in writing as to the applications for Permit(s), forms, information and fees, including fees required for Environmental Review, that are necessary to complete the application. When an application is determined to be complete the Zoning Officer shall make a record of that date. (Ord. 6478-NS § 4 (part), 1999)

**Section 23B.24.060 Registry of Organizations to Receive Notice**

The Zoning Officer shall maintain a registry of organizations to receive notices of public hearings and administrative decisions. Neighborhood and/or community organizations desirous of being included in the registry shall notify the Zoning Officer in writing, and it shall be the responsibility of the organization to notify the Zoning Officer of any changes. Each organization shall submit the following information, at a minimum, to be included in the registry:

A. The name and address of the organization;
B. The names, addresses and phone numbers of the contact persons; and
C. The area of interest within which notices of are to be sent to the organization. This area of interest shall be outlined on an appropriate map. (Ord. 6478-NS § 4 (part), 1999)

**Section 23B.24.070 Summary Denial of Certain Applications**

A. The Zoning Officer may summarily deny any application for a permit that proposes to legalize any alteration or use that is the subject of a final order under Chapter 23B.60 or Chapter 23B.64.

B. In deciding whether or not to summarily deny an application under this section, the Zoning Officer shall consider:
   1. The extent to which the work proposed in the application would be detrimental under Section 23B.32.040A;
   2. Whether the applicant had an adequate opportunity to submit the application prior to the adoption of a final order under Chapter 23B.60 or 23B.64; and
   3. The level of permit applied for (i.e., AUP, Use Permit or Variance). Applications for variances as a means of legalizing a violation are particularly disfavored.

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
C. The Zoning Officer shall not summarily deny applications for permits that are necessary comply with any such order.

D. A decision by the Zoning Officer to summarily deny an application under subdivision (A) of this section is final.

E. As used in this section, a “final order” is an order that is final as to the City. (Ord. 6726-NS § 1, 2003)
Chapter 23B.28
ADMINISTRATIVE USE PERMITS

Sections:

23B.28.010 Use Permits Issued by the Zoning Officer
23B.28.020 AUPs for Public and City Franchise Uses
23B.28.030 Referral of Applications for AUPs to Board
23B.28.040 Public Notice Requirements for AUPs
23B.28.050 Findings for Issuance and Denial and Conditions
23B.28.060 Appeals of Decision of Zoning Officer to Board

Section 23B.28.010 Use Permits Issued by the Zoning Officer

A. The Zoning Officer may issue Use Permits for the establishment of uses and the construction of buildings or structures without any consideration or action by the Board when so authorized by this Ordinance. Such administratively issued Use Permits are Administrative Use Permits or AUPs.

B. The Zoning Officer may issue an AUP only upon making the finding set forth in this chapter, as well as any other findings required by other chapters of this Ordinance. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.020 AUPs for Public and City Franchise Uses

The Zoning Officer may issue AUPs for any Accessory Buildings for public use or any use on City-owned property that is subject to franchise by the City. AUPs approved under this section are subject to the same automatic stay pursuant to Section 23B.28.060 as all other AUPs. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.030 Referral of Applications for AUPs to Board

If in the judgment of the Zoning Officer an application for an AUP has special neighborhood or community significance, he or she may schedule the matter for public hearing before the Board, in which case the Board shall review and act upon the application in the same manner as it acts upon other Use Permit applications. In such cases the applicant shall pay a fee for the public hearing, as set by Resolution of the Council. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.040 Public Notice Requirements for AUPs

A. Prior to the issuance of an AUP, the Zoning Officer shall give notice of his/her decision to approve, modify or deny an application, through posting and mailing of a Notice of Administrative Decision, which may be appealed as set forth below. The Notice shall

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
describe the proposed use or construction, the Zoning Officer’s decision on the Permit application, the location and times in which the application may be reviewed by the public, the procedure and time period in which appeals to the Board may be made, and the address where such appeals may be filed. Appeals may be filed within 20 days after posting and mailing, as set forth below. The Zoning Officer may extend the appeal period for a longer time.

B. The Notice of Administrative Decision shall be posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.

C. The Notice of Administrative Decision shall also be mailed to, in all cases: neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in Section 23B.24.060; in cases of projects in or adjacent to R- Districts, to owners and residents of properties abutting and confronting the subject property; in cases of major residential additions in the R-1(H) Districts, to property owners and residents in a 300 foot radius; except that when the proposed project or use may have effects on a larger area, the Zoning Officer may include a larger area beyond those described above. The Notice of Administrative Decision shall also be forwarded to the Board and sent to the Main Library. The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.28.050   Findings for Issuance and Denial and Conditions

A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.

C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.

D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)
Section 23B.28.060 Appeals of Decision of Zoning Officer to Board

A. Any person or entity aggrieved by a decision of the Zoning Officer may appeal the decision to the Board. Such appeal shall be made by filing one copy of a written appeal with the Zoning Officer during the appeal period. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.

B. The filing of a timely appeal stays issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn.

C. Upon the filing of a timely appeal the Zoning Officer shall set the matter for a public hearing at a future Board meeting.
   1. Notice of the hearing shall be given, and the Board shall approve, modify or deny the matter in the time and manner for other public hearings by the Board on Use Permit applications. When the appeal is filed solely by the applicant, the fees for the public hearing, as set by Resolution of the Council, shall be paid by the applicant.

D. The Board may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.

E. The decision of the Board may be appealed to the Council in the same time and manner and with the same effect as decisions of the Board with respect to Use Permits. (Ord. 7350-NS § 1, 2014: Ord. 6844-NS § 1 (part), 2005: Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.32
USE PERMITS

Sections:
23B.32.010 Use Permits Issued by the Zoning Adjustments Board
23B.32.020 Public Notice Requirements
23B.32.030 Public Hearing and Action
23B.32.040 Findings for Issuance and Denial and Conditions
23B.32.050 Notice of Decision and Appeal
23B.32.060 City Council Public Hearing
23B.32.070 Board Action on Remand
23B.32.080 Certification of Use Permits by City Council
23B.32.090 Repealed by Ord. 7350-NS.

Section 23B.32.010 Use Permits Issued by the Zoning Adjustments Board
Any Use Permit which cannot be issued by the Zoning Officer may be approved by the Board after a public hearing or by the Council if the Board’s decision is appealed. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.020 Public Notice Requirements
Prior to the Board’s consideration of any Use Permit, a notice of the public hearing on the matter shall be given as described herein:

A. The Zoning Officer shall prepare a Notice of Public Hearing containing information on the proposed construction or use, for each Use Permit application to be considered by the Board including the following information:
   1. A written summary of the project;
   2. The number of Dwelling Units or square feet of gross floor area; and
   3. Attachments or other information that, in the judgment of the Zoning Officer, are necessary to describe and illustrate the application.

B. The notice shall also include the environmental review status under the California Environmental Quality Act (CEQA), directions on how to obtain further information, the location and times in which the application may be reviewed by the public, how to submit written comments and information on the time and location of the public hearing.

C. A Notice of Public Hearing shall be posted at three visible locations in the vicinity of the subject property, and at a bulletin board at the Zoning Counter, not fewer than 14 days prior to the hearing; except that the time period for posting the notice may be
either for a longer time period when required by state law or extended by the Zoning Officer and/or Board to a maximum of 30 days for applications of major significance.

D. The Notice of Public Hearing shall also be mailed, not fewer than 14 days prior to the hearing, to:

1. Neighborhood and community organizations listed in the registry of neighborhood/community organizations within whose expressed area of interest the project falls;

2. The owners of properties and residents in the affected area; and

3. The Main Library.

E. For purposes of Paragraph 2 above, the affected area shall consist of, at the minimum, the owners and residents of the abutting and confronting properties, and any other person who has filed a written request for notice, except that when the proposed project or use may have effects to a larger area, the Zoning Officer may include a larger area beyond abutting and confronting properties; and, that in the case of the construction or demolition of one or more Dwelling Units, such area shall include all owners of properties, and residents within 300 feet on the same street or streets, including the abutting properties to the rear or within a 300 foot radius of the subject property, whichever will provide adequate coverage in a given case. In cases of relocated buildings, notice shall be given to property owners and residents within a 300 foot radius of both the Source and Receiving Lots. The Board or Council may enlarge the area of notice when it deems it appropriate.

F. The time period for mailing the notice may be for a longer time period when required by state law or extended by the Zoning Officer and/or Board for applications of major significance, except that the Zoning Officer or Board may only extend it to a maximum of 30 days.

G. The validity of the proceedings, however, shall not be affected by the failure of any property owner, resident or neighborhood or community organization to receive such mailed notice. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.030 Public Hearing and Action

Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures. A quorum of the Board as defined in Section 23B.04.020.A must be present to take an action. Any public hearing may be continued from time to time, but not beyond the time limits for reviewing applications established by State law. After the Board has conducted a public hearing, it shall either approve, modify, deny the application or refer it to a mediation or conflict resolution service. If the application is referred to mediation, it must return to the Board for action. (Ord. 6478-NS § 4 (part), 1999)
Section 23B.32.040  Findings for Issuance and Denial and Conditions

A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

B. Prior to approving any Use Permit the Board must also make any other findings required by either the general or District regulations applicable to that particular Use Permit.

C. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.

D. The Board may attach such conditions to any Use Permit as it deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.050  Notice of Decision and Appeal

A. After the Board takes an action to either approve, modify or deny an application for a Use Permit, and before the Board’s next regular meeting, the Zoning Officer shall issue a Notice of Decision describing the Board’s action, with its findings and applicable conditions.

B. The Zoning Officer shall mail the notice to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action, and shall also file a copy of the notice with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

C. Any person or entity aggrieved by a decision of the Board may appeal the decision to the Council by filing one copy of a written appeal with the City Clerk within 14 days after the mailing of the Notice of Decision.

1. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.

2. If a ground of the appeal is that the Board’s action constituted a taking of the subject property or any part thereof under the California or United States

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Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall apply to appeals on the ground that the Board’s decision or any condition imposed by the Board denied the applicant any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constituted a taking of property for public use without just compensation.

D. If a timely appeal is made by the applicant, the City Clerk shall forward a copy of the written appeal to the Zoning Officer. If the appeal is made by someone other than the applicant, the Clerk shall forward a copy of the written appeal to the applicant and a copy to the Zoning Officer.

E. Whenever a decision of the Board is inconsistent with a decision of the Landmarks Preservation Commission under Sections 3.24.200 through 3.24.240 with respect to the same project, the inconsistent decisions shall operate as a denial of that project. In such cases, if the applicant files an appeal as set forth in this section, the Council shall set the matter for hearing at the earliest feasible date after the later of the Board’s action or the Landmarks Preservation Commission’s action. No fee may be charged for appeals under this subsection. (Ord. 6939-NS § 2 (part), 2006; Ord. 6795-NS § 1 (part), 1999)

Section 23B.32.060 City Council Public Hearing

A. The City Clerk shall provide the Council with the written appeal or appeals, set the matter for a public hearing before the Council in consultation with the Zoning Officer, and give notice of the time and place of said hearing in the same manner and to the same recipients as for the Board hearing.

B. Before the hearing, the Zoning Officer shall forward the documents constituting the record on the matter to the Council. These shall include: copies of the Notice of Decision, indicating the Board’s vote, and the findings and conditions approved by the Board; the Public Hearing notice; any and all reports made by the Zoning Officer to the Board; correspondence and letters received both by the Board or the Council submitted during the appeal process; and the Use Permit application and attachments. In the case of construction projects, the Zoning Officer shall also prepare a description in tabular form of the project as approved by the Board. The Zoning Officer shall also make a report to the Council on the Board's original action, including the issues raised at the Board’s public hearing.

C. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures.
D. After opening the public hearing on the appeal, the Council may take one of the following actions:

1. Continue the public hearing;

2. Based on the record of the Council’s consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board’s original action; or

3. Remand the matter to the Board to reconsider the application, or any revisions thereto submitted after the Board’s action, in which case the Council shall specify whether or not the Board shall hold a new public hearing, and which issues the Board is directed to reconsider.

E. If the Council makes all of the findings required for the Permit before it and determines to grant the application, the City Clerk shall prepare a resolution reflecting the Council action and the Use Permit shall be issued forthwith.

F. Except in the case of a remand to the Board, when reviewing any decision of the Board on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Board with respect to the matter on appeal. The Council may adopt the Board’s decision and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council’s decision.

G. If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Board shall be deemed affirmed and the appeal deemed denied.


Section 23B.32.070  Board Action on Remand

A. If the Council directs the Board to hold a new public hearing, the Board shall hold a new noticed public hearing on the matter and make a decision which may be appealed to the Council in the normal manner, unless otherwise directed by the Council. In such cases if an appeal is filed solely by the applicant, the fees for the public hearing, as set by Council Resolution, shall be paid by the applicant.

B. If the Board does not act within 90 days of the date an appeal is remanded to it by the Council, then the original appeal of the Board’s decision shall be placed back on the Council agenda in the same manner as a new appeal. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.080  Certification of Use Permits by City Council.

The Council may certify for its review any action of the Board granting or denying a Use Permit within 14 days from the mailing of the Notice of Decision of that action. Such certification to the Council shall stay all proceedings in the same manner as the filing of

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a timely appeal. Certification shall not require any statement of reasons therefor, and shall not represent opposition to or support of an application. (Ord. 7350-NS § 3, 2014; Ord. 6478-NS § 4 (part), 1999)

Section 23B.32.090 Certification of Use Permits by City Council

Repealed by Ord. 7350-NS. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.34

Green Pathway

Sections:

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

Section 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. (Ord. 7230-NS § 1 (part), 2012)

Section 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. (Ord. 7230-NS § 1 (part), 2012)
Section 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

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. (Ord. 7230-NS § 1 (part), 2012)

Section 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. (Ord. 7230-NS § 1 (part), 2012)

Section 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. (Ord. 7230-NS § 1 (part), 2012)

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

In addition to the requirements of Section 23B.34.050, 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. (Ord. 7230-NS § 1 (part), 2012)

Section 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 Facade: 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:

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
Chapter 23B.34 Green Pathway

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. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;

2. Two 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. (Ord. 7230-NS § 1 (part), 2012)

Section 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. (Ord. 7230-NS § 1 (part), 2012)

**Section 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. (Ord. 7230-NS § 1 (part), 2012)

**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. (Ord. 7230-NS § 1 (part), 2012)

**Section 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. (Ord. 7230-NS § 1 (part), 2012)
Section 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. (Ord. 7230-NS § 1 (part), 2012)
Chapter 23B.36
MASTER USE PERMITS

Sections:
23B.36.010 Applicability of Master Use Permit Process
23B.36.020 Purposes of Master Use Permits
23B.36.030 Authorizations under the Master Use Permit Process
23B.36.040 Notice of Application
23B.36.050 Findings

Section 23B.36.010 Applicability of Master Use Permit Process
A. The Master Use Permit process may be used for any site which is entirely or partially contained in a C, MU-LI, MM or M District, and which, at full occupancy, will be occupied by three (3) or more independently operating businesses. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.020 Purposes of Master Use Permits
The purposes of this Chapter are to:
A. Facilitate the implementation of area plans, such as the West Berkeley Plan.
B. Facilitate the speedy reuse of large and multi-user sites which might otherwise prove difficult to reuse.
C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character which will benefit the occupants, the neighborhood, and the city as a whole.
D. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner.
E. Improve Berkeley’s competitiveness in attracting and retaining businesses by allowing businesses to move onto a site quickly once overall development requirements have been established. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.030 Authorizations under the Master Use Permit Process
A. A Master Use Permit may authorize the establishment or expansion of more than one (1) individual business and/or use on a site as of right, provided that all other applicable requirements of the Zoning Ordinance are met.
B. The Master Use Permit shall state the number of square feet of buildings and land to be used for Industrial (Manufacturing, Wholesaling and warehousing), Office
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Chapter 23B.36 MASTER USE PERMITS

(exclusive of offices ancillary to other uses), Commercial (Retail and Personal service), Live/Work Units and Residential Uses.

C. The number of square feet actually built in each use may vary from that set forth on the Master Use Permit by up to ten percent (10%). Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated number of square feet for any use may be authorized by an Administrative Use Permit; variations of more than twenty-five percent (25%) may be authorized by a Use Permit modification.

D. So long as the allocation of floor area for various uses as specified in Paragraph B above remains within the limits set forth in Paragraphs B and C, lease spaces may be divided or aggregated in any manner as of right. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.040 Notice of Application

A. Master Use Permits may be approved only by the Board.

B. Public notice of application for a Master Use Permit shall be the same as for Use Permits, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.36.050 Findings

In order to approve a Master Use Permit, the Board must find that approval is likely to cause more rapid occupancy and use of a site for the purposes set forth in the applicable Zoning District and Area Plan, if any, than would requiring individual Use Permits. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.40

AUPS FOR TEMPORARY USES

Sections:
23B.40.010 Temporary Uses
23B.40.020 Notice Requirements
23B.40.030 Issuance, Findings and Conditions
23B.40.040 Appeals of Zoning Officer Decisions

Section 23B.40.010 Temporary Uses

A. The Zoning Officer may issue an Administrative Use Permit (AUP) for a Temporary Use, building or structure as set forth in this Chapter.

B. An AUP is not required for a temporary Retail Use when the sales are on the same property with an established commercial business holding a valid City business license, except when in conflict with a Permit.

C. No seasonal product sales activity may exceed a period of forty-five (45) days or may be established in any R-District. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.020 Notice Requirements

All Permits for Temporary Uses or structures shall be subject to the same notice requirements as other AUPs, except that the notice time period shall be for fourteen (14) days. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.030 Issuance, Findings and Conditions

A. The Zoning Officer may issue an AUP for a Temporary Use, building or structure upon finding that the establishment, maintenance or operation of the Temporary Use, or the construction of a temporary structure, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. In determining whether to make this finding, the Zoning Officer shall take into consideration whether the temporary nature of the use or structure will render it not detrimental.

B. Conditions may be attached to any AUP for a Temporary Use or structure as are deemed necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety, and welfare. In addition, the AUP shall specify...
the time period described in the application, as modified, for which the Temporary Use or structure is authorized, with a specified ending date.

C. No extensions of time are allowed unless approved by the Zoning Officer. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.40.040  Appeals of Zoning Officer Decisions

Any party aggrieved by the decision of the Zoning Officer to approve, modify or deny an AUP for a Temporary Use or structure, or by any condition attached thereto, may appeal the decision to the Board, in the same manner as any other AUP, except that Permits for seasonal product sales of pumpkins and Christmas trees, including the use of a temporary structure for an office shall be exempt from appeals. Notice of issuance of a Permit for seasonal product sales shall be posted for fourteen (14) days, after which the AUP will become effective immediately. (Ord. 6478-NS § 4 (part), 1999)

Commented [BN153]: revision

Commented [BN154]: Posted in one visible location on the subject property?

Commented [PA155R154]: STAFF RESPONSE: on subject property and two additional (nearby) locations/areas.
Chapter 23B.44

VARIANCES

Sections:
23B.44.010 Variances
23B.44.020 Application and Hearing Process
23B.44.030 Findings for Issuance and Denial
23B.44.040 Notice of Decision, Appeal, Certification by Council
23B.44.050 Exception where Applicant Establishes Inapplicability or Unconstitutionality of General Requirements

Section 23B.44.010 Variances

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance, provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings, the percentage of lot coverage, or the parking space requirements when development is proposed on property which is located within thirty feet of an open creek and where varying or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses. (Ord. 6954-NS § 1 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

Commented [BN156]: Does this narrowly mean the allowed land use on a property, or something more broadly defined?
Commented [PA157R156]: STAFF RESPONSE: Yes

Commented [BN158]: Does lot area requirement only mean the minimum lot area or also parcel dimension standards (e.g., minimum width and depth)?
Commented [PA159R158]: STAFF RESPONSE: see previous question

Commented [BN160]: Does parking space requirements mean minimum number of on-site space, or parking space dimensional standard, both, or something else?
Commented [PA161R160]: STAFF RESPONSE: see previous question

Commented [BN162]: If a type of development standard isn’t listed here, is a variance not an option? For example, no variance allowed for minimum usable open space requirement or minimum distance between buildings?
Commented [PA163R162]: STAFF RESPONSE: change to “any provision of this Ordinance related to use, use standards or development standards”
This is a Phase 1 change.

Section 23B.44.020 Application and Hearing Process

A. Applications and fees for Variances shall be submitted in the same manner as for Use Permits.
B. Notice of applications for Variances shall be given in the same manner as for Use Permits.
C. Hearings on Variances shall be scheduled and held, and actions shall be taken, in the same manner as for Use Permits.
D. Subject to the findings required for issuance, the Board has the same authority with respect to the approval, denial, modification and conditioning of Variances as it does with respect to Use Permits. (Ord. 6478-NS § 4 (part), 1999)
Section 23B.44.030   Findings for Issuance and Denial

A. After the Board has conducted a public hearing, it shall act on the application. The Board may approve a Variance application, either as submitted or modified, only if it makes all of the following findings:

1. There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District;

2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property’s owner;

3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;

4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.

B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.040   Notice of Decision, Appeal, Certification by Council

Notices of decisions on applications for Variances shall be given, and appeals thereof shall be taken, in the same manner and subject to the same limitations as for Use Permits. The Council may certify a Board decision concerning a Variance in the same manner and to the same effect as a decision concerning a Use Permit. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.44.050   Exception where Applicant Establishes Inapplicability or Unconstitutionality of General Requirements

A. The Board may waive or limit the application of any requirement of this Ordinance to a particular development project if it finds that such requirement would result in a deprivation of the applicant’s constitutional rights.

B. The burden of establishing that this exemption applies is on the applicant. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.48

MODIFICATION OF DEVELOPMENT STANDARDS

Sections:

23B.48.010  Applicability
23B.48.020  Purposes
23B.48.030  Authorizations to Modify Use Locations and/or Development Standards
23B.48.040  Findings

Section 23B.48.010  Applicability

The Board may consider an application under this Chapter to modify the Development Standards applicable to a site, if:

A. The majority of the site is contained in a C-W, MU-LI, MM or M District.
B. The applicant is requesting approval of development standards which are different from those otherwise applicable to the location; and/or the applicant is requesting the right to build the project in phases.
C. As of the effective date of this Chapter, the site is at least five (5) contiguous acres in land area in the City under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or is less than five (5) acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), and/or mainline railroad tracks and/or the borders of the City.
D. The application does not propose any modification that would result in a violation of any restriction set forth in Section 23E.80.045. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.48.020  Purposes

The purposes of this Chapter are to:

A. Facilitate the implementation of the West Berkeley Plan.
B. Facilitate the speedy reuse of the small number of large sites which have proven difficult to reuse.
C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character which will benefit the occupants, the neighborhood and the City as a whole; and
D. Allow modifications of standards when such modifications serve the overall purposes of their districts and the West Berkeley Plan on large, complex sites and where the...
Section 23B.48.030  Authorizations to Modify Use Locations and/or Development Standards

A. Modification of Development Standards may authorize relocation of uses that are generally limited as to location within a building, location on a site or location within a district to alternative locations in the building, on the site or in the district, as applicable, where they would otherwise not be permitted.

B. A Modification of Development Standards may authorize modifications to otherwise applicable development standards including but not limited to, height, yard requirements, open space requirements and parking standards. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.48.040  Findings

A. In order to approve a Modification of Development Standards, the Board must make the finding required by Section 23B.32.040, all findings required for a Use Permit in the District in which the site is predominantly located, as well as the following findings:

1. The site is eligible for consideration for a Modification of Development Standards under Section 23B.48.010;

2. The project is likely to advance the purposes of the West Berkeley Plan and this Chapter;

3. The project supports the attraction and/or retention of the types of businesses reflected in the purposes of the applicable District.

B. If the application seeks modifications to otherwise applicable development standards or limitations on the locations of uses, the Board must find that the modifications are necessary and appropriate for the development of the proposed project. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.52

REASONABLE ACCOMMODATION

Sections:
23B.52.010 Purpose
23B.52.020 Application
23B.52.030 Information Required
23B.52.040 Process
23B.52.050 Action on Application--Criteria--Findings--Appeal
23B.52.060 Recission of Grants of Reasonable Accommodation
23B.52.070 Fees

Section 23B.52.010 Purpose

It is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. The City also recognizes the importance of sustaining and enhancing neighborhoods. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The purpose of this chapter is to establish a process for making and acting upon requests for reasonable accommodation. (Ord. 6668-NS § 1, 2001)

Section 23B.52.020 Application

A. Any person who requests reasonable accommodation in the form of modification in the application of a zoning or subdivision law which may act as a barrier to fair housing opportunities due to the disability of existing or proposed residents, may do so on a form prescribed for that purpose by the City.

B. If the project for which the request is being made also requires some other approval, permit or entitlement under this Title or Title 21 of this code, the applicant shall file the request together with the application for such approval, permit or entitlement.

C. An application under this chapter may seek an accommodation that is also available under other provisions that allow modifications of otherwise applicable standards in this title or Title 21 of this code. In such cases, an accommodation under this chapter shall be in lieu of any approval, permit or entitlement that would otherwise be required.

D. An application under this chapter may also seek an accommodation that is not also available under any other provision of this title or Title 21 of this code. (Ord. 6668-NS § 1, 2001)
Section 23B.52.030  Information Required

In addition to any other information that is required under this title or Title 21, the applicant shall provide the following information:

A. Applicant’s name, address and telephone number;
B. Address of the property for which the request is being made;
C. The current actual use of the property;
D. The ordinance provision for which modification is requested;
E. A description of why the modification is reasonably necessary to make the specific housing available to the person(s), including information establishing that the applicant is disabled under applicable laws;
F. Such other relevant and permissible information as may be requested by the Director of Planning & Development or his or her designee. (Ord. 6668-NS § 1, 2001)

Section 23B.52.040  Process

A. If an application under this chapter is filed with an application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the same manner as such other application, and shall be subject to all of the same procedures. If an application under this chapter is filed with more than one other application under this title or Title 21, the Zoning Officer shall determine the appropriate procedure to be used.

B. If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer. (Ord. 6668-NS § 1, 2001)

Section 23B.52.050  Action on Application--Criteria--Findings--Appeal

A. An application under this chapter may be approved, approved subject to conditions, or denied.

B. The following factors shall be considered in making a determination regarding the reasonableness of any application under this chapter:

1. Need for the requested modification, including alternatives that may provide an equivalent level of benefit;
2. Physical attributes of and any proposed changes to the subject property and structures;

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
3. Whether the requested modification would impose an undue financial or administrative burden on the City;

4. Whether the requested modification would constitute a fundamental alteration of the City’s zoning or subdivision program;

5. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood;

6. Any other factor that may have a bearing on the request.

C. Any decision on an application under this chapter shall be supported by written findings and conclusions addressing the criteria set forth in this subdivision, and shall be subject to appeal pursuant to the procedures applicable under the preceding subdivision. (Ord. 6668-NS § 1, 2001)

**Section 23B.52.060  Recission of Grants of Reasonable Accommodation**

Any approval or conditional approval of an application under this chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances. (Ord. 6668-NS § 1, 2001)

**Section 23B.52.070  Fees**

There shall be no fee for an application under this chapter. (Ord. 6668-NS § 1, 2001)
Chapter 23B.56

CONDITIONS APPLICABLE TO ALL PERMITS

Sections:
23B.56.010 Uses Approved Deemed to Exclude Other Uses
23B.56.020 Modification of Permits
23B.56.030 Plans and Representations Become Conditions
23B.56.040 Subject to All City and Other Regulations
23B.56.050 Required Guarantees
23B.56.060 Periodic Review and Reporting
23B.56.070 Limited Duration of Time
23B.56.080 Exercised Permit for Use Survives Vacancy of Property
23B.56.090 Resubmittal of Same Use Permit Application
23B.56.100 Exercise and Lapse of Permits

Section 23B.56.010 Uses Approved Deemed to Exclude Other Uses
A. Any approval permits only those uses and activities actually proposed in the application and excludes other uses and activities.
B. Unless otherwise specified therein, any approval terminates all other uses at the location subject to the approval. [Ord. 6478-NS § 4 (part), 1999]

Section 23B.56.020 Modification of Permits
A. No change in the use or structure for which a Permit has been issued is permitted unless the Permit is modified by the Zoning Officer or Board. Changes which require modification include, but are not limited to, the following:
1. Expanding the floor or land area devoted to the approved use or uses;
2. Expanding a customer service area and/or increase in the number of customer seats;
3. Changing a building’s occupant load rating under the City’s Building Code so that it is classified in a different category with a higher occupancy rating;
4. Increasing the number of employees, beds, rooms or entrances;
5. Establishing a new product line, service, function or activity so as to substantially change the character of the use;
6. Increasing the volume of production, storage or capacity of any business manufacturing process or activity;
7. Changing the type of alcohol sales and/or service; and

Commented [BN181]: This is not true as written. Approval of a new use in a shopping center doesn’t terminate approvals of the other shopping center use. What is the intent here? Is it: “Approval of a new use that replaces an existing use terminates any prior approval of the existing use. To reestablish the previously existing use, an applicant must obtain all permits and approvals required by the Zoning Ordinance for the use”? 
Commented [PA182R181]: STAFF RESPONSE: Agreed -- but use a word other than “terminate”? 
Commented [BN183]: Revisiting this will be a potential phase 2 amendment 
Commented [PA184R183]: STAFF RESPONSE: agreed 
Commented [PA186R185]: STAFF RESPONSE: There is no modification to DR. Instead, there would be a new DR process.
8. Any other change that expands, intensifies or otherwise substantially changes the use or building.

B. AUPs may be modified by the Zoning Officer but all other Permits may be modified only by the Board.

C. The Board may modify Permits which have not been exercised without a public hearing or may set the matter for a public hearing, in which case the procedures for Use Permits will apply.

D. Permits for construction of a building may not be modified after construction is complete. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.030 Plans and Representations Become Conditions

Unless otherwise specified or required by the Zoning Officer, Board or Council, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or submitted during the approval process shall be deemed conditions of approval. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.040 Subject to All City and Other Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.050 Required Guarantees

Any approval may be subject to requirements that the permittee guarantees, warranties or insures that the Permit’s plans and/or conditions shall in all respects be complied with. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.060 Periodic Review and Reporting

All approvals may be subject to periodic review to determine compliance with the requirements thereof and conditions attached thereto. If a condition specifies that activities or uses allowed under the Use Permit are subject to periodic reporting, monitoring or assessments, it shall be the responsibility of the permittee, the property owner or successor property owners to comply with such conditions. (Ord. 6478-NS § 4 (part), 1999)

Section 23B.56.070 Limited Duration of Time

Any approval may be subject to time limits. (Ord. 6478-NS § 4 (part), 1999)
Section 23B.56.080   Exercised Permit for Use Survives Vacancy of Property

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant.  [Ord. 6478-NS § 4 (part), 1999]

Section 23B.56.090   Resubmittal of Same Use Permit Application

No application for any approval which has been denied may be resubmitted by the applicant for a period of one (1) year from such denial except on the grounds of new evidence or substantially changed conditions, or if the application was denied without prejudice.  [Ord. 6478-NS § 4 (part), 1999]

Section 23B.56.100   Exercise and Lapse of Permits

A.  A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.

B.  A permit for the construction of a building or structure is exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

C.  A permit may be declared lapsed and of no further force and effect if it is not exercised within one (1) year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has applied for a building permit.

D.  Permits may be declared lapsed by the Zoning Officer upon fourteen (14) days written notice to the permittee. Any determination by the Zoning Officer that a permit has lapsed may be appealed to the Board in the same manner as an action by the Zoning Officer on an AUP.  [Ord. 6478-NS § 4 (part), 1999]

Commented [BN200]: This is unusual. Usually a use permit expires after a use is discontinued for a year. Is changing this a potential phase 2 amendment?

Commented [PA201R200]: STAFF RESPONSE: Prior use is tracked for business permits and to determine if change of use is needed. Leave as is.

Commented [PA202]: STAFF COMMENT: Remove “Use” this applies to UP and AUP.

Commented [BN203]: Does the City apply this resubmittal limitation only to Use Permits or to all types of permits and requested approvals?

Commented [PA204R203]: STAFF RESPONSE: Applied to anything that ends at City Council.

Commented [BN205]: Should this be “shall be declared lapsed...”? If “may,” what factors does the City consider when deciding whether to declare a permit lapsed?

Commented [PA206R205]: STAFF RESPONSE: Detriment and nuisance are the factors. Keep as is.
Chapter 23B.60

COMPLIANCE AND REVOCATION

Sections:

23B.60.010 Revocation and Modification of Permits
23B.60.020 Findings for Revocation/Modification of Permit
23B.60.030 Proceedings for Initiation of Revocation/Modification -- Hearing
23B.60.040 Recommendation
23B.60.050 Council Proceedings -- Notice of Decision
23B.60.060 Remedies
23B.60.070 Recovery of Costs -- Fees

Section 23B.60.010 Revocation and Modification of Permits

A. The Council may revoke or modify any Permit if it makes the findings required by this Chapter.

B. Permits for Temporary Uses may be revoked for non-compliance with any conditions designated therein, and the Zoning Officer may issue an immediate cease and desist order.

C. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy. (Ord. 6972-NS § 1 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.020 Findings for Revocation/Modification of Permit

If the Council makes any of the findings set forth in this Section, it may revoke or modify the permit.

A. The holder of the permit has failed to comply with at least one or more of the conditions set forth therein.

B. The use, structure or building permitted has been substantially expanded or changed in character beyond that set forth in the permit.

C. The property has been vacant for one (1) year and the applicant has not demonstrated a good faith intent to re-occupy the property with the use specified in the approved Permit. In such cases, the burden shall be on the permittee to establish his/her good faith intent, and the Board may require the applicant to produce documentation to substantiate that good faith intent. (Ord. 6972-NS § 1 (part), 2007: Ord. 6478-NS § 4 (part), 1999)
Section 23B.60.030  Proceedings for Initiation of Revocation/Modification -- Hearing Required for Recommendation to Revoke or Modify

A. Proceedings under this chapter to revoke or modify Permits may be initiated by a referral by the Zoning Officer, Board or Council. Such referral shall identify the Permit being considered, identify the property to which the permit applies, and set forth the reason or reasons for the proposed revocation or modification. A referral by the Board shall fix a time and place for a public hearing on the proposed revocation. The Zoning Officer shall fix a time and place for a public hearing on all other referrals.

B. Upon such referral, the Zoning Officer shall give notice of a public hearing before the Board as set forth in Section 23B.32.020 and shall also mail, within the prescribed time period, the notice of the hearing to the current holder of the Permit, the owner of the subject property, the person who requested an initiation of revocation proceedings, and any other person who has filed a written request with the Zoning Officer for such notice.

C. The public hearing before the Board shall be conducted as set forth in Section 23B.32.030. (Ord. 6972-NS § 1 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.040  Recommendation

Upon conclusion of the hearing, the Board shall make a written recommendation to the Council whether to revoke or modify the Permit on the grounds specified in section 23B.60.020, based on the evidence, testimony, and facts presented to the Board at the hearing. Such recommendation shall include written findings in support thereof and shall be issued within thirty-five (35) days after the conclusion of the hearing. (Ord. 6972-NS § 1 (part), 2007)

Section 23B.60.050  Council Proceedings -- Notice of Decision

A. If the Board recommends that the Council revoke or modify the Permit, that recommendation shall be set for public hearing before the Council within 60 days following its issuance, unless all person(s) subject to the Board’s recommendation consent to it in writing within 10 days after it is issued, in which case it shall be deemed a final decision by the City to revoke the Use Permit or to impose additional conditions thereon, as the case may be.

B. A record of the Board’s proceedings in all matters under this chapter, including its recommendation, if any, shall be filed with the City Clerk within 14 days following the date the Board either issues or declines to issue a recommendation, and the City Clerk shall present said record to the City Council at its next regular meeting at which it is practicable to do so. Notwithstanding subdivision A of this section, the Council may set the matter for hearing within 30 days thereafter.

C. Notice and conduct of hearings before the Council shall be as set forth in section 23B.60.030.

Commented [BN213]: meaning the property owner/lessee subject to the revocation proceedings?
Commented [PA214R213]: STAFF RESPONSE: Yes
Commented [BN215]: Can someone appeal this final decision to the Council?
Commented [PA216R215]: STAFF RESPONSE: Final decisions of the City are not appealable.
D. After hearing, the Council may find that the Permit should be revoked or modified on the bases set forth in section 23B.60.020 and impose any remedy provided for in this Chapter, or take no action.

E. If the Council revokes or modifies a Permit, the City Clerk shall issue a Notice of Decision describing the Council’s action, with its findings. The City Clerk shall mail the notice to the permit holder, the owner of the subject property, the person who requested proceedings under this chapter, and any person who requests such a notification by filing a written request therefore with the Zoning Officer or the City Clerk, and shall file a copy of the Notice of Decision with the Zoning Officer. (Ord. 6972-NS § 1 (part), 2007)

Section 23B.60.060 Remedies

Upon making any of the findings set forth in Section 23B.60.020, the Council may impose any remedy available at law or in equity which shall include, but is not limited to, any of the following or combination thereof: enjoining the use in whole or in part; imposing reasonable conditions upon any continued operation of the use, including those uses which constitute existing non-conforming uses; requiring continued compliance with any conditions so imposed; requiring the use to guarantee that such conditions shall in all respects be complied with; and, upon a failure of the user to comply with any conditions so imposed, imposing additional conditions or enjoining the use in whole or in part. (Ord. 6972-NS § 1 (part), 2007: Ord. 6578-NS § 5, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.60.070 Recovery of Costs -- Fees

A. The City may recover the costs of any corrective action under this chapter that is effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.

B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Council, takes any action authorized by Section 23B.60.060, in which case payment of costs charged under this paragraph shall be made a condition of continued operation of said building, structure or use.

C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of costs under paragraph A above. (Ord. 6972-NS § 1 (part), 2007)
Chapter 23B.64

ABATEMENT OF NUISANCES

Sections:

23B.64.010 Nuisances Prohibited
23B.64.020 Nuisances Defined
23B.64.030 Proceedings for Initiation of Abatement
23B.64.040 Recommendation
23B.64.050 Council Proceedings -- Notice of Decision
23B.64.060 Remedies
23B.64.070 Recovery of Costs - Fees

Section 23B.64.010 Nuisances Prohibited

A. No land, building or premises may be used, operated or maintained, and no building or structure may be set up, erected, constructed, altered, enlarged, converted, moved or maintained, in such a manner as to create or result in a public nuisance as defined in this chapter.

B. The City Attorney may, at his or her discretion or upon order of the Council, immediately commence action or proceedings for the abatement and removal and enjoinment of violations in the manner provided by law, and may take such other steps and may apply to such courts as may have jurisdiction to grant such relief as will abate and remove such use, or building or structure, and may seek to restrain and enjoin any person, firm or corporation from such use of any property, building or structure, or from setting up, erecting, building, maintaining or demolishing any such building or structure contrary to the provisions of this chapter.

C. The procedures and remedies provided for herein shall be cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.

D. It shall be the duty of the City Manager, or his or her designee, to enforce the provisions of this chapter pertaining to the establishment of any use or the erection, construction, reconstruction, demolition, moving, conversion, alteration or addition to any building or structure.

E. All departments, officials and employees of the City vested with the duty or authority to issue permits shall conform to the provisions of this chapter and shall issue no permit or license for uses, buildings or purposes in conflict with this chapter; and any such permit or any business license issued in conflict with the provisions of this chapter shall be null and void. Nothing in this section is intended to create a mandatory duty under Government Code Section 815.6.
F. Any violation of Title 23 of this code is a misdemeanor, but may be cited or charged, at the election of the enforcing officer or City Attorney, as an infraction. In all other respects, the provisions of Chapter 1.20 shall apply.

G. If compliance is not had with an order of the Zoning Officer to correct violations of this chapter within the time specified therein, the Zoning Officer may file in the Office of the County Recorder a certified statement describing the property and certifying that:

1. The property and/or structure is in violation of this chapter; and

2. The owner has been so notified.

The notice shall specifically describe the violations and a proof of service shall also be recorded with the Notice and Order. Whenever the corrections ordered shall thereafter have been completed, the Zoning Officer shall file a new certified statement with the county recorder certifying that all required corrections have been made so that the property and/or structure is no longer in violation of this chapter. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 1, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.020 Nuisances Defined

Any use, event, structure or building, whether non-conforming or otherwise, which meets any of the nuisance criteria set forth in this section is a public nuisance subject to abatement as set forth herein.

A. Maintenance or operation, by omission or commission in such a way as to result in or facilitate any of the following activities, each of which the City hereby declares to be a public nuisance: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests or any other activity declared by the City to be a public nuisance;

B. Violation of any provision of this chapter or any other City, state or federal regulation, ordinance or statute; or

C. Any use or event, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six (6) Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three (3) Berkeley Police Department patrol officers at any other time, to quell such disturbance. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 2, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.030 Proceedings for Initiation of Abatement

A. Proceedings under this chapter to terminate, modify or condition (hereinafter abate or if context requires, abatement) any use, structure or building may be initiated by a
referral by the Zoning Officer, Board or Council. Such referral shall identify the use, structure or building being considered, identify the property involved, and set forth the reason or reasons for the proposed abatement. A referral by the Board shall fix a time and place for a public hearing on the proposed abatement. The Zoning Officer shall fix a time and place for a public hearing on all other referrals.

B. Upon such referral, the Zoning Officer shall give notice of a public hearing before the Board as set forth in Section 23B.32.020, and shall also mail, within the prescribed time period, the notice of the hearing to the person or persons whose use, structure or building is the subject of the proceedings, the owner of the subject property, any person who requested initiation of the proceedings, and any other person who has filed a written request with the Zoning Officer for such notice.

C. The public hearing before the Board shall be conducted as set forth in Section 23B.32.030. (Ord. 6972-NS § 2 (part), 2007; Ord. 6578-NS § 4, 2000; Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.040 Recommendation

Upon conclusion of the hearing, the Board shall make a written recommendation to the Council as to whether a nuisance exists and, if so, the appropriate remedy, based on the evidence, testimony, and facts presented to the Board at the hearing. Such recommendation shall include written findings in support thereof and shall be issued within thirty-five (35) days after the conclusion of the hearing. (Ord. 6972-NS § 2 (part), 2007; Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.050 Council Proceedings -- Notice of Decision

A. If the Board recommends that the Council make a determination of nuisance, that recommendation shall be set for public hearing before the Council within 60 days following its issuance unless all person(s) subject to the Board’s recommendation consent to it in writing within 10 days after it is issued, in which case it shall be deemed a final decision by the City to terminate the use or structure, or impose conditions thereon, as the case may be.

B. A record of the Board’s proceedings in all matters under this chapter, including its recommendation, if any, shall be filed with the City Clerk within 14 days following the date the Board either issues or declines to issue a recommendation, and the City Clerk shall present said record to the City Council at its next regular meeting at which it is practicable to do so. Notwithstanding subdivision A of this section, the Council may set the matter for hearing within 30 days thereafter.

C. Notice and conduct of hearings before the Council shall be as set forth in section 23B.60.030.

D. After hearing, the Council may find, that the use, structure or building constitutes a nuisance and impose any remedy provided for in this Chapter, or take no action.
E. If the Council makes a determination of nuisance, the City Clerk shall issue a Notice of Decision describing the Council’s action, with its findings. The City Clerk shall mail the notice to the permit holder, the owner of the subject property, the person who requested proceedings under this chapter, and any person who requests such a notification by filing a written request therefore with the Zoning Officer or the City Clerk, and shall file a copy of the Notice of Decision with the Zoning Officer. (Ord. 6997-NS, 09/11/07:Ord. 6972-NS § 2 (part), 2007: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.060 Remedies

A. Upon a finding of nuisance pursuant to this section, the Board or Council may impose any remedy available at law or in equity which shall include, but is not limited to, any of the following or combination thereof: enjoining the use in whole or in part; imposing reasonable conditions upon any continued operation of the use, including those uses which constitute existing non-conforming uses; requiring continued compliance with any conditions so imposed; requiring the user to guarantee that such conditions shall in all respects be complied with; and, upon a failure of the user to comply with any conditions so imposed, imposing additional conditions or enjoining the use in whole or in part.

B. In addition or as an alternative to any other remedy, in the case of a public nuisance as defined in Section 23B.64.020.C, the Board or Council may impose an administrative penalty of up to $10,000 jointly and severally on the person(s) responsible for the nuisance and/or the property owner, and/or may impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessitated by future such public nuisances. (Ord. 6972-NS § 2 (part), 2007: Ord. 6578-NS § 3, 2000: Ord. 6478-NS § 4 (part), 1999)

Section 23B.64.070 Recovery of Costs -- Fees

A. The City may recover the costs of any nuisance abatement effected by the City through its employees (including through litigation) or by contract under this chapter, as set forth in Sections 1.24.140 through 1.24.210, except that the hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee, and shall be appealable to the Council within 10 days after a decision is mailed. In the event such an appeal is filed within the time period specified above, the Council shall hold a hearing as set forth in Section 1.24.180.

B. The Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this chapter. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the Board, or, on appeal, the Council, takes any action authorized by Section 23B.64.060, in which case payment of costs charged under this paragraph shall be made a condition of continued operation of said building, structure or use.
C. Any amounts received pursuant to paragraph B above shall be deducted from any recovery of abatement costs under paragraph A above. (Ord. 6972-NS § 2 (part), 2007: Ord. 6478-NS § 4 (part), 1999)
Chapter 23B.68

PRIVATE RIGHT OF ACTION

Sections:

23B.68.010 Private Right of Action

Section 23B.68.010 Private Right of Action

A. Any resident of the City may bring a private action for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this Title.

B. No action may be brought under this Section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.

C. In any action prosecuted under this Section a prevailing plaintiff may recover reasonable attorneys’ fees. (Ord. 7023-NS § 2, 3/25/08)

Commented [BN227]: City Attorney should review this and advise on whether this should remain as is, remain with modification, or be removed. This is typically not in a zoning code.

Commented [PA228R227]: STAFF RESPONSE: Flag for CA review of draft BZO

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
Chapter 23E.08
Design Review

Sections:
23E.08.010 Purpose
23E.08.020 Applicability
23E.08.030 Applicability of Design Review: Criteria
23E.08.040 Design Review Standards

Section 23E.08.010 Purpose
A. The purposes of design review are to:
1. Encourage excellence in design and to ensure that new construction and alterations to existing buildings are compatible with the best elements of the existing character of the area, in order to provide a pleasing urban environment for Berkeley residents, pedestrians and building occupants;
2. Consider a project in relation to its urban context and to focus on the subject matter included in the design guidelines.
B. The design guidelines adopted by reference in this Ordinance are intended to give direction to Staff, the Design Review Committee, the Landmarks Preservation Commission (LPC), and the Board in reviewing proposed projects. The design guidelines are also intended to assist applicants in planning and design of their projects. The guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.
C. Issues of design shall be considered separately from issues of use. Design review shall not address land use issues. (Ord. 6478-NS § 4 (part), 1999)

Section 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 Section 23D.36.050 for area description).

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
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. 7210-NS § 16, 2011: Ord. 6478-NS § 4 (part), 1999)

Section 23E.08.030 Applicability of Design Review: Criteria

A. For projects determined to be subject to Design Review under Section 23E.08.020, the design review standards under Section 23E.08.040 shall apply. For projects requiring a public hearing by the Zoning Adjustments Board, staff shall recommend to the Board whether Design Review should be conducted by staff or by the Design Review Committee. The responsibility for conducting Design Review shall be as set forth in Section 23E.12.020, as to whether the DRC, the LPC, or staff conducts Design Review.

B. In making this determination, the Board or staff shall consider the following criteria:
   1. Project size;
   2. Visibility;
   3. Degree of sensitivity of the community. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.08.040 Design Review Standards

A. Design review shall consider the design of a project in relation to its urban context, and shall focus on the application of the design guidelines referred to in this Ordinance and other guidelines written in conformance with the guidelines which are formally adopted by the Planning Commission.

B. When conducting design review the Design Review Committee, the LPC, or staff shall use the design guidelines adopted by the Planning Commission as its official policy.

C. The Design Review Guidelines, or any portion thereof, may be amended by the Commission. The Board may comment to the Commission on such amendments.
D. The entity responsible for design review shall consider the conformance of the application to the standards set forth in and promulgated under this Ordinance, and may either approve, deny or modify an application for design review. However, no modification may be made that is not consistent with any other requirement of this Ordinance. (Ord. 6478-NS § 4 (part), 1999)
Chapter 23E.12

DESIGN REVIEW PROCESS

Sections:

23E.12.010 Application Requirements
23E.12.020 Responsibility for Design Review
23E.12.030 Design Review Timeline
23E.12.040 Design Review Procedures
23E.12.050 Design Review Committee Proceedings
23E.12.060 Staff Level Design Review Proceedings
23E.12.070 Review of Building Plans

Section 23E.12.010 Application Requirements

A. Applications for projects subject to design review shall include such information as may be required by the Zoning Officer. Such information may include, but is not limited to, site plans, floor plans, building sections perpendicular to the street, exterior elevations, photographs of the subject or abutting properties, perspective or axonometric drawings and/or a model, description of building materials, material and/color samples, exterior lighting and fence plans, signage details and locations, and landscape and irrigation plans.

B. Applications requiring design review shall be subject to a fee schedule as established by resolution of the City Council. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.020 Responsibility for Design Review

A. The Landmarks Preservation Commission (LPC) has the responsibility for design review of projects which involve landmarks, structures of merit or buildings within a historic district, pursuant to Chapter 3.24.

B. The Design Review Committee or design review staff has responsibility for design review of other projects which involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24. Such applications shall be referred to the LPC for comment, prior to the approval of the application.

C. The Design Review Committee or design review staff has responsibility for design review of projects other than those noted in the two preceding paragraphs, which involve a building or a structure over forty (40) years old. In cases where a building or structure may have special architectural or historical significance, as determined by the secretary to the LPC, the project shall be referred to either the LPC or Staff by the design review staff for advisory comments prior to review by the Design Review Committee or design review staff.

The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.
D. The Design Review Committee or design review staff has responsibility for design review of all projects subject to design review which are not described in the preceding paragraphs. When the secretary of the LPC determines that a building that is forty (40) years old or less may have special architectural and/or historical significance, the Design Review Committee or design review staff may refer the application to the LPC or its staff for comment.

E. The Design Review Committee or design review staff has responsibility for design review of signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC’s current List of Structures and Sites, and may refer such projects to the LPC or its staff for comments. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.030 Design Review Timeline

A. Design review for projects which are not subject to approval by the Board shall be completed within sixty (60) days of the date the application is complete. However, if the applicant modifies the application, or if the applicant submits a written time extension, the time period for review may be extended beyond sixty (60) days.

B. Design review for projects which are subject to approval by the Board shall be required as condition of permit approval, and shall be completed within sixty (60) days of submittal of complete final design review plans or within the time limit required by state law, whichever is less. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.040 Design Review Procedures

A. Projects requiring an AUP or a Zoning Certificate shall have Design Review conducted at the Staff level.

B. The Zoning Officer may refer any project subject to Board review to the Design Review Committee, staff or the LPC. Design Review Committee procedures for preliminary design review and final design review may occur for matters involving Board action.

C. Preliminary design review may be conducted by the Design Review Committee, staff, or the LPC prior to Board action on a project in order for design recommendations to be considered by the Board. Final design review action by the Design Review Committee, staff, or the LPC may occur after Board approval of the project, as a condition of a permit. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.050 Design Review Committee Proceedings

A. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public; however, no public hearing is required. Review of a project by the Committee may be continued as necessary subject to the timeline set forth in this Chapter. The Committee shall adopt its own rules and procedures.
The Berkeley Municipal Code is current through Ordinance 7581-NS, passed October 31, 2017.

Berkeley Municipal Code  
Chapter 23E.08 Design Review

Section 23E.08.060 Agendas for Design Review Committee meetings shall be posted on the bulletin board located in front of the Civic Center Building at least seventy-two (72) hours before the meeting. The agenda must list all projects and discussion items to be considered at that Committee meeting.

C. Any person may appeal any action of the Committee to the Board by filing an appeal letter stating the reasons for the appeal, along with the required fee, with the Zoning Officer, within fourteen (14) days of the date of the Committee’s action. Design Review appeals are limited to design issues. Any such appeals shall be scheduled on the Board agenda within forty-five (45) days of the appeal filing. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.060 Staff Level Design Review Proceedings

A. When design review is conducted by Staff, Staff shall give notice of its review by posting a Notice of Design Review on or adjacent to the subject property, not fewer than fourteen (14) days prior to the date of Staff action. The notice shall describe the proposed use or construction, Staff’s proposed decision on the design review application, the location and times at which the application may be reviewed by the public, the procedure and time period in which appeals to the Design Review Committee may be made, and the address where such appeals may be filed. Staff may consider public input during the design review process.

B. Any person may appeal any action of the staff to the Design Review Committee by filing an appeal letter stating the reasons for the appeal, along with the required fee, with the Zoning Officer, within fourteen (14) days of the date the Notice of Design Review is posted. Design review appeals are limited to design issues. Any such appeals shall be scheduled on the Committee agenda within forty-five (45) days of filing an appeal. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.12.070 Review of Building Plans

Staff shall review all building permit applications subject to design review for compliance with the approved design review plans or conditions. (Ord. 6478-NS § 4 (part), 1999)
Attachment 4: Content Questions

Presented below are six questions pertaining to content in the current Zoning Ordinance. Each question explains existing Zoning Ordinance language and provides new Baseline Zoning Ordinance (BZO) language. Staff requests the subcommittee provide feedback on whether new BZO language accurately describes the City’s existing rules relating to these issues.

1. ZAB Authority to Revoke Permits

The existing Zoning Ordinance is unclear on the role and powers of the ZAB to revoke a permit. Section 23B.04.020.B.3 states that the ZAB has the power to review, modify or revoke previously issued Use Permits and Variances. Section 23B.60.040 states that the ZAB recommends to the City Council whether to revoke or modify a permit and Section 23B.60.050 states that if the ZAB recommends revocation or modification, and all persons subject to this recommendation consent, the ZAB’s decision is final and no action by the Council is required.

This issue is addressed in BZO Section 23.404.070.C, as follows:

2. ZAB Recommendation.
   a. The ZAB may recommend that the City Council revoke or modify the permit based upon the findings specified in following Subsection E (Findings).
   b. The ZAB recommendation shall be:
      i. Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
      ii. Supported by written findings; and
      iii. Issued within 35 days after the conclusion of the hearing.

3. Final Decision. A ZAB recommendation to deny or modify a permit shall be deemed a final decision if the permit holder consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

Staff requests the subcommittee confirm that BZO Section 23.404.070.C accurately describes the ZAB’s role in the permit revocation process.

2. LPC Application Review

Existing Zoning Code Section 23B.24.030.B states the following:

A list of all pending applications for Permits shall be provided to the Landmarks Preservation Commission at every regular meeting thereof. Each property that is the
subject of an application included in that list shall be placed on the agenda for potential initiation.

The BZO carries this forward in Section 23.404.020.H, as follows:

<table>
<thead>
<tr>
<th>H. Referrals to Landmarks Preservation Commission.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>List of Applications Provided to LPC.</strong> At every regular Landmarks Preservation Commission (LPC) meeting, the Department shall provide the LPC a list of all pending permit applications.</td>
</tr>
<tr>
<td>2. <strong>Properties Placed on Agenda.</strong> All properties included in the pending permit application list shall be placed on the LPC meeting agenda to allow the LPC to begin the historic landmark designation process for a property if appropriate.</td>
</tr>
</tbody>
</table>

While paragraph 2 above is consistent with the existing Zoning Code, it is not consistent with current practice and not desired. Staff requests subcommittee feedback on whether paragraph 2 should be deleted.

3. **Variance Eligibility**

The existing Zoning Ordinance is unclear on which standards may be modified with a Variance. Section 23B.44.010 states that:

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance.

BZO Section 23.404.060.B.1 revises this language as follows:

| 1. **Deviations Allowed with a Variance.** The City may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards. |

Staff requests that the subcommittee confirm that the BZO language accurately reflects which standards may be modified with a Variance.
4. **Design Review – When Required**

Existing Zoning Code Section 23E.08.020 reads as follows:

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 Section 23D.36.050 for area description).

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.

BZO Section 23.406.050.B revises this language as follows:

B. **When Required.**

1. Design Review is required for:
   
   c. Projects in all non-residential districts.

   d. Commercial, mixed-use, and community and institutional projects in the R-4, R-SMU and R-S district.

   e. Mixed use and community and institutional projects in the R-3 district within the Southside Plan area (see Section 23.202.XX for Plan area).

2. As used in previous Paragraph (1), “project” means an activity requiring a building or sign permit that involves any of the following:

   f. Modifying the exterior of an existing structure.

   g. Additions to an existing structure.

   h. Demolishing all or a portion of an existing structure.

   i. Removing all or part of a building facade fronting the public right-of-way.

   j. Constructing a new structure.

   k. Installing or replacing a sign.

*Staff requests that the subcommittee confirm that the BZO language accurately identifies development subject to Design Review.*
5. Determining Who Conducts Design Review

For projects requiring a ZAB hearing, existing Zoning Code Section 23E.08.030 describes the process to determine who conducts Design Review as follows:

A. For projects determined to be subject to Design Review under Section 23E.08.020, the design review standards under Section 23E.08.040 shall apply. For projects requiring a public hearing by the Zoning Adjustments Board, staff shall recommend to the Board whether Design Review should be conducted by staff or by the Design Review Committee. The responsibility for conducting Design Review shall be as set forth in Section 23E.12.020, as to whether the DRC, the LPC, or staff conducts Design Review.

B. In making this determination, the Board or staff shall consider the following criteria:

1. Project size;
2. Visibility;
3. Degree of sensitivity of the community.

BZO Section 23.406.050.C.2 revises this language as follows:

**2. Design Review Committee or Department Staff.** For projects requiring a public hearing by the Zoning Adjustments Board (ZAB), Design Review shall be conducted by either the Design Review Committee or Department staff, as determined by the ZAB. When making this determination, the ZAB shall consider project size, visibility, and degree of sensitivity to the neighboring properties or the general public.

*Staff requests that the subcommittee confirm that the BZO language accurately identifies the process and criteria to determine who conducts Design Review for projects subject to ZAB review.*

6. LPC Role in Design Review

Existing Zoning Ordinance Section 23E.12.020 identifies responsibility for Design Review of historic and potentially historic structures as follows:

A. The Landmarks Preservation Commission (LPC) has the responsibility for design review of projects which involve landmarks, structures of merit or buildings within a historic district, pursuant to Chapter 3.24.

B. The Design Review Committee or design review staff has responsibility for design review of other projects which involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24. Such applications shall be referred to the LPC for comment, prior to the approval of the application.
C. The Design Review Committee or design review staff has responsibility for design review of projects other than those noted in the two preceding paragraphs, which involve a building or a structure over forty (40) years old. In cases where a building or structure may have special architectural or historical significance, as determined by the secretary to the LPC, the project shall be referred to either the LPC or Staff by the design review staff for advisory comments prior to review by the Design Review Committee or design review staff.

D. The Design Review Committee or design review staff has responsibility for design review of all projects subject to design review which are not described in the preceding paragraphs. When the secretary of the LPC determines that a building that is forty (40) years old or less may have special architectural and/or historical significance, the Design Review Committee or design review staff may refer the application to the LPC or its staff for comment.

E. The Design Review Committee or design review staff has responsibility for design review of signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC's current List of Structures and Sites, and may refer such projects to the LPC or its staff for comments. (Ord. 6478-NS § 4 (part), 1999)

BZO Section 23.406.050.C.3 carries forward existing Subsection B above as follows:

| 3. Landmarks Preservation Commission. The Landmarks Preservation Commission (LPC) conducts Design Review of projects which involve landmarks, structures of merit or buildings within a historic district in accordance with Chapter 3.24 (Landmarks Preservation Commission. The LPC conducts Design Review for landmarked properties through the Structural Alteration Permit process. |

BZO Section 23.406.050.I clarifies required Design Review referrals to the LPC as follows:

| I. Referrals to Landmarks Preservation Commission. |
| 1. Mandatory Referrals. The following Design Review applications shall be referred to the LPC for review and comment prior to action of the application: |
| a. Projects that involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24. |
| b. Projects that involve a building or a structure over 40 years old which may have special architectural or historical significance, as determined by the secretary to the LPC. |
2. **Optional Referrals.** Department staff or the Design Review Committee may choose to refer the following projects to the LPC for review and comment prior to action of the application:

   a. Projects that involve a building that is 40 years old or less that may have special architectural and/or historical significance, as determined by the secretary to the LPC.

   b. Signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC’s current List of Structures and Sites.

*Staff requests that the subcommittee confirm that the BZO language accurately identifies the LPC role in the Design Review process.*
Potential Phase 2 Amendments
This table lists potential substantive changes to the Zoning Ordinance to be made during Phase 2 of the Zoning Ordinance Revisions Project.

<table>
<thead>
<tr>
<th>POTENTIAL CHANGE</th>
<th>BZO Section</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Application Submittal and Review</strong></td>
<td></td>
</tr>
<tr>
<td>A-1: <strong>Submittal Materials.</strong> Require an application to contain all required information, documents, and materials before the City will accept the application and begin the review process.</td>
<td>23.404.020 (Application Submittal and Review)</td>
</tr>
<tr>
<td>A-2: <strong>Pre-Application Conference.</strong> Codify a pre-application process, either optional or mandatory, for certain projects</td>
<td>23.404.020 (Application Submittal and Review)</td>
</tr>
<tr>
<td>A-3: <strong>Consolidated Review.</strong> Consolidate review authority for projects with permits reviewed by different review authorities. Allow one review authority to act on projects where overlapping decision-making authority currently exists.</td>
<td>23.404.020.F (Multiple Permit Applications)</td>
</tr>
<tr>
<td>A-4: <strong>Application Deemed Withdrawn.</strong> Add an “applications deemed withdrawn” provision by which the City may automatically deem an application withdrawn if an applicant doesn’t pay fees or provide requested information within a specified time period</td>
<td>23.404.020.G (Review for Completeness)</td>
</tr>
<tr>
<td>A-4.1: <strong>Summary Denial Appeals.</strong> Allow the appeal of a decision to summarily deny an application.</td>
<td>23.404.030.K (Summary Denial of Applications)</td>
</tr>
<tr>
<td>A-4.2 <strong>Conflicting ZB/LPC Decisions.</strong> Provide automatic review and decision by City Council of conflicting ZAB and LPC decisions</td>
<td>23.404.040.I (Recommendations)</td>
</tr>
<tr>
<td>A-5: <strong>Conflict Mediation.</strong> Remove these conflict resolution or mediation service provisions from the Zoning Ordinance.</td>
<td>23.404.040.L (Use of Conflict Resolution or Mediation Service)</td>
</tr>
<tr>
<td>POTENTIAL CHANGE</td>
<td>BZO Section</td>
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<tr>
<td><strong>A-6</strong>: Modification of Permits. Streamline and simplify process to approve modification of permits.</td>
<td>23.404.060 (Permit Modification)</td>
</tr>
<tr>
<td><strong>A-7</strong>: Recovery of Costs. Remove the recovery of costs section and integrate with Chapter 1.24. Require all costs to be additive.</td>
<td>23.404.070.H (Recovery of Costs)</td>
</tr>
<tr>
<td><strong>B. Administrative Use Permits</strong></td>
<td></td>
</tr>
<tr>
<td><strong>B-1</strong>: By-Right Uses. Allow more projects by-right without an Administrative Use Permit. If a use or structure complies with all applicable standards, allow the project by-right without an Administrative Use Permit.</td>
<td>23.406.020.C (When Required)</td>
</tr>
<tr>
<td><strong>B-2</strong>: Deviations from Standards. Reduce the reliance on Administrative Use Permits and Use Permits to allow deviations from standards.</td>
<td>23.406.020.C (When Required)</td>
</tr>
<tr>
<td><strong>B-3</strong>: Temporary Uses. Do not require an AUP for temporary uses. Require a different type of permit that can be approved more quickly.</td>
<td>23.406.020.C (When Required)</td>
</tr>
<tr>
<td><strong>B-4</strong>: AUP Findings. Revise AUP findings to better reflect desired outcomes. Restate findings as a positive rather than negative.</td>
<td>23.406.020.E (Findings for Approval)</td>
</tr>
<tr>
<td><strong>C. Design Review</strong></td>
<td></td>
</tr>
<tr>
<td><strong>C-1</strong>: Residential Design Review. Replace use permits with a residential design review process to address site planning and design issues for new homes and additions; establish clear and appropriate design criteria for residential projects.</td>
<td>23.406.050.B (When Required)</td>
</tr>
<tr>
<td><strong>C-2</strong>: When Required. Reduce the type of projects subject to design review. Don’t require design review for very minor modifications to buildings and structures.</td>
<td>23.406.050.B (When Required)</td>
</tr>
<tr>
<td><strong>C-3</strong>: Minor Projects. Establish a new over-the-counter approval process to address design review for signs/awnings and minor facade modifications.</td>
<td>23.406.050.B (When Required)</td>
</tr>
<tr>
<td>POTENTIAL CHANGE</td>
<td>BZO Section</td>
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<tr>
<td><strong>C-4:</strong> Staff Review of Landmarks. Allow staff to approve Design Review of minor projects affecting landmarks, appealable to the LPC.</td>
<td>23.406.050.C (Review Authority)</td>
</tr>
<tr>
<td><strong>C-5:</strong> Staff Review. Allow staff to conduct Design Review for most projects, except for a select few major projects that would continue to be reviewed by the DRC.</td>
<td>23.406.050.C (Review Authority)</td>
</tr>
<tr>
<td><strong>C-6:</strong> LPC Referrals. Limit LPC referrals to structures on the State Historic Resources Inventory or LPC-adopted List of Structures and Sites. Eliminate “Optional Referrals.”</td>
<td>23.406.050.L (Design Review Committee Proceedings)</td>
</tr>
<tr>
<td><strong>C-7:</strong> Criteria. Establish more objective Design Review Criteria in the Zoning Ordinance.</td>
<td>23.406.050.M (Basis for Approval)</td>
</tr>
<tr>
<td><strong>C-8:</strong> ZAB Conduct Design Review. Eliminate the Design Review Committee and shift Design Review authority to ZAB. Increase reliance on staff for Design Review approvals and recommendations.</td>
<td>23.402.050 (Design Review Committee)</td>
</tr>
<tr>
<td><strong>C-9:</strong> Town Architect. Replace the DRC with a new Town Architect to approve staff-level Design Review and make Design Review recommendations to the ZAB.</td>
<td>23.402.050 (Design Review Committee)</td>
</tr>
<tr>
<td><strong>C-10:</strong> Design Review Committee Composition. Modify DRC composition (number of members, qualifications). Revise definition of layperson or require only one layperson.</td>
<td>23.402.050 (Design Review Committee)</td>
</tr>
<tr>
<td><strong>C-11:</strong> Design Review for ZAB Projects. Clarify criteria uses to determine whether staff or the DRC conducts Design Review for projects approved by the ZAB.</td>
<td>23.406.050.C (Review Authority)</td>
</tr>
<tr>
<td><strong>D. Use Permits</strong></td>
<td></td>
</tr>
<tr>
<td><strong>D-1:</strong> AUP for Low-Impact Uses. Allow with an Administrative Use Permit low-impact uses currently requiring a Use Permit.</td>
<td>23.406.030.C (When Required)</td>
</tr>
<tr>
<td>POTENTIAL CHANGE</td>
<td>BZO Section</td>
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<td>----------------------------------------</td>
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<tr>
<td>D-2: <strong>UP Findings.</strong> Revise UP findings to better reflect desired outcomes. Restate findings as a positive rather than negative.</td>
<td>23.406.030.E (Findings for Approval)</td>
</tr>
<tr>
<td>E. Zoning Certificates</td>
<td></td>
</tr>
<tr>
<td>E-1: <strong>Limit When Required.</strong> Limit the types of projects that require a Zoning Certificate.</td>
<td>23.406.090.B (When Required)</td>
</tr>
<tr>
<td>E-2: <strong>Streamlined Alternative.</strong> Establish a more streamlined process to verify that a use or structure complies with the Zoning Ordinance as part of the building permit/business license process.</td>
<td>23.406.090.B (When Required)</td>
</tr>
<tr>
<td>F. Other Permit and Administration Issues</td>
<td></td>
</tr>
<tr>
<td>F-1: <strong>Minor Modification.</strong> Create a new staff-level discretionary approval process to allow minor adjustments to development standards in all zones.</td>
<td>23.406 (Specific Permit and Approval Requirements)</td>
</tr>
<tr>
<td>F-2: <strong>Conceptual Review.</strong> Establish a conceptual review process where an applicant can receive non-binding feedback from decision-makers before submitting a formal application (or even during the application review process.</td>
<td>23.406 (Specific Permit and Approval Requirements)</td>
</tr>
<tr>
<td>F-3: <strong>Nuisance Abatement.</strong> Remove the nuisance abatement chapter from the Zoning Ordinance and integrate with generally applicable nuisance abatement provisions in Municipal Code Chapter 1.24 (Abatement of Nuisances)</td>
<td>23.414 (Nuisance Abatement)</td>
</tr>
<tr>
<td>F-4: <strong>Variance Findings.</strong> Revise Variance findings to more closely align with Variance findings in the Government Code and to revise reference to “benefit the City.”</td>
<td>23.406.060.F (Findings for Approval)</td>
</tr>
<tr>
<td>F-5: <strong>ZAB Composition.</strong> Add membership requirements for ZAB (e.g., minimum number of architects, landscape architects, ect.)</td>
<td>23.402.060 (Zoning Adjustments Board)</td>
</tr>
<tr>
<td>G. Appeals</td>
<td></td>
</tr>
<tr>
<td>G-1: <strong>Appealable Actions.</strong> Limit the types of decisions that may be appealed.</td>
<td>23.410.020 (Appeal Subjects and Jurisdiction)</td>
</tr>
<tr>
<td>POTENTIAL CHANGE</td>
<td>BZO Section</td>
</tr>
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<td>----------------------------------</td>
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</tr>
<tr>
<td>G-2: <strong>Eligibility to Appeal.</strong></td>
<td>Limit who may appeal a decision.</td>
</tr>
<tr>
<td>G-3: <strong>Appeal Periods.</strong></td>
<td>Standardize the appeal period for all decisions (14 days).</td>
</tr>
<tr>
<td>G-4: <strong>Scheduling Appeal Hearing.</strong></td>
<td>Establish a minimum timeframe for the City to hear an appeal.</td>
</tr>
<tr>
<td>G-5: <strong>Appeal Subject – Public Comment.</strong></td>
<td>When acting on an appeal, require that the ZAB and Council only consider public comment and correspondence related to the subject of the appeal.</td>
</tr>
<tr>
<td>G-6: <strong>Council Certifications.</strong></td>
<td>Eliminate the ability for the Council to certify ZAB and LPC decisions.</td>
</tr>
<tr>
<td>G-7: <strong>Calls for Review.</strong></td>
<td>Change the name of Council Certifications to Calls for Review.</td>
</tr>
</tbody>
</table>