

CITY OF BERKELEY ZONING ORDINANCE REVISION PROJECT



Planning Commission Meeting
September 2, 2020

Presentation Overview

- Project Background
- BZO Overview and Noteworthy Changes
- Consent Changes and Potential Phase 2 Amendments
- BZO Next Steps

Project Background

- City Council Referral
- Project Purpose
- Phased Approach
- Work Completed



BZO Objectives

Revise the Zoning Ordinance so that:

- The average person can understand the Zoning Ordinance
- Users can easily find what they are looking for
- It is clear which rules apply to a project or property
- Important rules are prominent and not hidden in unexpected places
- Users are unlikely to overlook something important
- The Zoning Ordinance can be easily maintained over time and maintain its coherence
- The Zoning Ordinance can easily accommodate future substantive revisions

Noteworthy Changes

- Writing Style
- Organization
- Allowed Use Tables
- Maps
- Supplemental Standards
- Permits and Administration

**BASELINE ZONING
ORDINANCE**

MUNICIPAL CODE TITLE 23

Subcommittee Draft

June 26, 2020

Writing Style

Existing 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 from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.

Writing Style

BZO Section 23.406.050 - Variances

B. When Allowed

- 1. Deviations Allowed with a Variance.** The ZAB 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).

Organization

- Sub-titles consolidated into single title
- Five divisions:
 - Division 1: General Provisions
 - Division 2: Zoning Districts
 - Division 3: Citywide Provisions
 - Division 4: Permits and Administration
 - Division 5: Glossary

**BASELINE ZONING
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MUNICIPAL CODE TITLE 23

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General Organization

Existing

23D.16: R-1

23D.20: R-1A

23D.24: ES-R

23D.28: R-2

23D.32: R-2A

23D.36: R-3

23D.40: R-4

23D.44: R-5

23D.48: R-S

23D.52: R-SMU



New

23.202: Residential Districts

23.302: Supplemental Use Regulations

23.304: General Development Standards

Allowed Use Tables

- Allowed land use tables for each individual district are combined for the residential, commercial, and manufacturing district chapters
- Removed from existing tables:
 - Permit requirements for activities and structures that are not land uses are removed from tables
 - Fine-grained and complex permit requirements

Existing R-1 Allowed Use Table: Packet Page 41

Chapter 23D.16: R-1 Single Family Residential District Provisions

Separate tables for each district

Table 23D.16.030 (Continued)

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)		on 23D.16.070 for restrictions.
Major Residential Additions		tion in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.16.050

Contains permit requirements for non-land uses

BZO Allowed Use Table: Packet Page 9

TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS

One table for all residential districts

ZC = Zoning Certificate UP(PH) = Use Permit AUP = Administrative Use Permit - = Prohibited Use * Use-Specific Regulations Apply	Residential Districts										asternsk following the permit requirement (e.g., ZC*)		
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-5	R-SMU			
Residential Uses													
Accessory Dwelling Unit	See 23.306			-							See 23.306		
Dwellings													
Single-Family				UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Two-Family				UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Multi-Family				UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Group Living Accommodation	-	-	-	-	-	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Senior Congregate Housing	-	See 23.302.070.H											
Public and Quasi-Public Uses													
Child Care Center	UP(PH)						UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Club/Lodge	UP(PH)						UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Columbaria	AUP*						AUP*	AUP*	AUP*	AUP*	23.302.070.C		
Community Care Facility													
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Emergency Shelter	-	-	-	-	-	-	See 23.308						
Family Day Care Home, Large	AUP	AUP	-	AUP	AUP	AUP	AUP	AUP	AUP	AUP			
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC			
Hospital	-	-	-	-	-	UP(PH)	UP(PH)	UP(PH)	-	UP(PH)			
Library	UP(PH)	UP(PH)	-	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Nursing Home	-	-	-	-	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Park/Playground	ZC	ZC	UP	ZC	ZC	ZC	ZC	ZC	ZC	ZC			
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Religious Assembly	UP(PH)	UP(PH)	-	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
School	UP(PH)	UP(PH)	-	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)			
Commercial Uses													
Alcoholic Beverage Service	-	-	-	-	-	-	-	-	-	UP(PH)*	23.310		

Consistent terminology

Contains only land uses; non-uses (e.g., fences) removed

Maps

Maps replace text descriptions of geographic areas

FIGURE 23.322-1: CAR-FREE OVERLAY BOUNDARIES



Supplemental Standards

Supplemental use regulations, development standards, and permit requirements that apply to multiple districts are stated once rather than repeated for each district

23.206.030 – ADDITIONAL PERMIT REQUIREMENTS

A. **New Floor Area.**⁴ A project that creates new floor area for any use requires additional permits as shown in Table 23.206-2. Creation of new floor area includes:

1. Construction of new main buildings or accessory buildings;
2. Additions to existing buildings; or
3. The installation of new floor or mezzanine levels within or onto existing buildings.

TABLE 23.206-2: NEW FLOOR AREA PERMIT REQUIREMENTS

District/New Gross Floor Area	Permit Required for New Floor Area
M, MM	
Less than 20,000 sq. ft.	ZC
20,000 to less than 40,000 sq. ft.	AUP
40,000 sq. ft. or more	UP(PH)
MU-LI	
Less than 10,000 sq. ft.	ZC
10,000 to less than 20,000 sq. ft.	AUP
20,000 sq. ft. or more	UP(PH)
MU-R	
Less than 5,000 sq. ft.	ZC
5,000 to less than 10,000 sq. ft.	AUP
10,000 sq. ft. or more	UP(PH)

Permits and Administration

Procedures that apply to multiple types of permits are stated once rather than repeated for each permit type

Existing

23B.20: Zoning Certificates

23B.28: AUPs

23B.32: Use Permits

23B.36: Master Use Permits

23B.40: AUPs for Temporary Uses

23B.44: Variances

23B.48: Modifications



New

23.404: Common Permit Requirements

23.406: Specific Permit Requirements

23.410: Appeals

Consent Changes

- BZO substantive changes that are minor and not controversial
- Footnotes in BZO chapters
- Summary table describes changes and identifies location in BZO and existing code

Consent Changes

23.102.070 – CONFLICTING PROVISIONS

- A. **Conflict with State or Federal Regulations.**¹¹ Where the Zoning Ordinance conflicts with state or federal laws, higher law controls over lower law unless local variation is permitted.
- B. **Conflict with Other City Regulations.**¹² Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.
- C. **Conflict with Private Agreements.**¹³ It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning Ordinance, but the City is not responsible for monitoring or enforcing private agreements.

¹⁰ Source: 23A.24.020

¹¹ New. Explains how to handle conflicts with state or federal law.

¹² New. CONSENT CHANGE. Explains how to handle conflicts with other City regulations.

¹³ Source: 23A.24.030.D. CONSENT CHANGE: New statement that City is not responsible for monitoring or enforcing private agreements.

Phase 2 Amendments

- Potential Phase 2 Amendment list prepared during BZO drafting
- Staff will recommend to Subcommittee, Planning Commission, and City Council priority amendments
- Subcommittee and Planning Commission will review draft amendments as they are prepared

Phase 2 Amendments

Example: Allow more uses by right or with an AUP to streamline the permitting process.

TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS

ZC = Zoning Certificate UP(PH) = Use Permit AUP = Administrative Use Permit – = Prohibited Use * Use-Specific Regulations Apply	Residential Districts										Use-Specific Regulations Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	
Residential Uses											
Accessory Dwelling Unit	See 23.306		–	See 23.306							
Dwellings											
Single-Family	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Two-Family	–	UP(PH)	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Multi-Family	–	–	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Group Living Accommodation	–	–	–	–	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Senior Congregate Housing	–	–	–	–	See 23.302.070.H						
Public and Quasi-Public Uses											
Child Care Center	UP(PH)	UP(PH)	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Club/Lodge	UP(PH)	UP(PH)	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Columbaria	AUP*	AUP*	–	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.302.070.C
Community Care Facility	See 23.202.040.A										
Community Center	UP(PH)	UP(PH)	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	

Requested Feedback

- Does the Draft BZO achieve the project objectives?
- Are consent changes minor and not major policy changes?
- Are there any changes in the Draft BZO that are more appropriately considered in Phase 2?
- Are there specific stakeholders staff should approach to request feedback on the Draft BZO?

BZO Next Steps

- Expanded Outreach beginning in September
- Planning Commission hearing planned for October 7, 2020
- City Council adoption hearings planned for late 2020

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