

Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** March 20, 2012

**Item Number:** 29

**Item Description:** Downtown Area Plan 2012 and Implementation Measures

The attached report includes amendments to the C-DMU zoning, Green Pathway, and Downtown Area Plan policies, as were suggested at the March 13, 2012 Council meeting. A new resolution was added as requested by the Council on March 13, 2012, calling for City Council review of implementation of the DAP after final approval of the first building over 75 feet in the DAP area.

***Consideration of supplemental agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

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Office of the City Manager

ACTION CALENDAR  
March 20, 2012

To: Honorable Mayor and Members of the City Council  
From: Christine Daniel, Interim City Manager  
Submitted by: Wendy Cosin, Interim Director, Planning Department  
Subject: Downtown Area Plan 2012 and Implementation Measures

RECOMMENDATION

1. Adopt a Resolution Certifying the Environmental Impact Report (EIR) and Adopting CEQA Findings and the Mitigation Monitoring and Reporting Program (*see March 20, 2012 packet*);
2. Adopt a Revised Resolution approving amendments to the General Plan text and map to implement the DAP 2012 and adopting the DAP 2012, including revised policies as shown on Exhibit C (*attached*).
3. Adopt first reading of Ordinances to repeal and reenact Chapter, 23E.68, and re-titling it from C-2 to Commercial Downtown Mixed- Use (C-DMU) (*attached*); to adopt Chapter, 23B.34 (Green Pathway) (*attached*); and to amend Definitions in Chapter 23F.04 (*see March 6, 2012 packet*); and
4. Adopt first reading of an Ordinance to amend the official Zoning Map by reclassifying portions of the Downtown Area Plan area from C-1, C-2, C-SA, R-2A and R-4 to C-DMU, C-SA, or R-3 and include the following four subareas within the C-DMU District: Core, Outer Core, Corridor, and Buffer (*see March 6, 2012 packet*); and
5. Adopt a Resolution requiring review of DAP 2012 upon approval of first building over 75 feet (*attached*).

FISCAL IMPACTS OF RECOMMENDATION

See March 6 and 20, 2012 staff reports

CURRENT SITUATION AND ITS EFFECTS

On March 13, 2012, the City Council requested changes to the draft C-DMU District and Green Pathway zoning language, and Downtown Area Plan policies. Attachments to this report include:

- Revised ordinances: Chapter, 23E.68, Commercial Downtown Mixed- Use (C-DMU) and Chapter, 23B.34, Green Pathway.
- Revised Resolution approving amendments to the General Plan text and map to implement the DAP 2012 and adopting the DAP 2012, including corrections to Exhibit A (showing all General Plan changes in strike-out and underlining) and a

new Exhibit C (with revised DAP policies regarding revenue for capital investment downtown, housing policies, and guarantee of community benefits).

- New resolution calling for City Council review of implementation of the DAP after final approval of the first building over 75 feet in the DAP area.

### BACKGROUND

A public hearing was held on March 6, 2012 to consider the 2012 Downtown Area Plan (DAP 2012), minor amendments to the City's General Plan that incorporate the DAP 2012 provisions, and amendments to the Zoning Ordinance and reclassification of properties to implement the DAP. The March 6, 2012 staff report provided background about the DAP 2012 and implementing regulations. The March 20, 2012 staff report provides information regarding certification of the Final EIR, which is required prior to adoption of the DAP and implementing measures.

### RATIONALE FOR RECOMMENDATION

See March 6 and 20, 2012 staff reports

### ALTERNATIVE ACTIONS CONSIDERED

See March 6 and 20, 2012 staff reports

### CONTACT PERSON

Wendy Cosin, Interim Director, Planning and Development, 981-7402

### Attachments:

1. Revised resolution approving amendments to the General Plan text and map to implement the DAP 2012 and adopting the DAP 2012, including Corrected Exhibit A and New Exhibit C (revised policies to be incorporated into final DAP).
2. Revised Ordinance to repeal and reenact Chapter, 23E.68, and re-titling it from C-2 to Commercial Downtown Mixed- Use (C-DMU), showing changes
3. Revised Ordinance to repeal and reenact Chapter, 23E.68, and re-titling it from C-2 to Commercial Downtown Mixed- Use (C-DMU), clean
4. Revised Ordinance to adopt Chapter, 23B.34 (Green Pathway), showing changes
5. Revised Ordinance to adopt Chapter, 23B.34 (Green Pathway), clean
6. Resolution requiring review of DAP 2012 upon approval of first building over 75 feet.

RESOLUTION NO. ##,### N.S.

ADOPTING THE 2012 DOWNTOWN AREA PLAN AND ASSOCIATED AMENDMENTS TO THE GENERAL PLAN TO INCORPORATE THE 2012 DOWNTOWN AREA PLAN

WHEREAS, the City of Berkeley (“City”) adopted a Downtown Plan in 1990; and

WHEREAS, the City’s General Plan, adopted in 2001 and 2002, contains numerous references to the 1990 Downtown Plan; and

WHEREAS, in 2005 the City Council directed initiation of a process to develop a new Downtown Area Plan (DAP) to replace the 1990 Downtown Plan; and

WHEREAS, the Downtown Area Plan Advisory Committee held numerous meetings and workshops beginning in November 2005, and culminating in a recommendation on November 29, 2007; and

WHEREAS, the Planning Commission discussed the proposed DAP at approximately 20 meetings in 2008 and 2009, held a public hearing on the DAP on April 6, 2009, and adopted a “Revised Final Draft” recommending approval to the City Council on April 15, 2009; and

WHEREAS, on May 13, 2009 after a public hearing, the Planning Commission recommended approval of proposed amendments to the General Plan to bring it into conformance with the proposed DAP; and

WHEREAS, the City Council held a duly noticed public hearing on the DAP and associated General Plan amendments on June 2 and June 9, 2009, and further considered the DAP on July 7, 2009; and

WHEREAS, on July 14, 2009 the City Council adopted the revised Downtown Area Plan and modifications to the General Plan with Resolution No. 64,581; and

WHEREAS, a referendum petition, opposing the newly adopted Downtown Area Plan 2009, containing the requisite number of signatures was presented to the Council in 2009; and

WHEREAS, on February 23, 2010 the City Council rescinded its July 2009 approval of the Downtown Area Plan and related modifications to the City of Berkeley General Plan with Resolution No. 64,782; and

WHEREAS, on July 13, 2010 the City Council placed a ballot measure on the November 2, 2010 election ballot with Resolution No. 65,007, “Submitting To The Berkeley Electorate A Measure Adopting A Green Vision For The Downtown, Designating The Downtown Area, Adopting Policies, And Providing Guidance For Future Council Decision-Making”; and

WHEREAS, contingent on approval of this ballot measure, on July 13, 2010, the City Council adopted Resolution No. 65,006, which adopted amendments to the General Plan to update the text of the General Plan, conform the downtown geographic area described in the General Plan to that of the DAP, and reflect specific aspects of the ballot measure to ensure consistency between the General Plan and the ballot measure; and

WHEREAS this measure was Measure R on November 2, 2010 ballot, and was approved by a majority of voters in the City of Berkeley; and

WHEREAS the 2009 DAP was revised to be consistent with Measure R; and

WHEREAS, additional amendments to the 2002 Berkeley General Plan were prepared to replace references to the 1990 Downtown Plan and update the text consistent with the revised DAP and related zoning proposal; and

WHEREAS the Planning Commission, in 2010 and 2011 considered this revised DAP and the additional General Plan amendments, and held duly noticed public hearings on November 16, 2011 and December 7, 2011; and

WHEREAS, the proposed 2012 DAP is fully consistent with the goals in the General Plan to encourage transit-oriented residential development in Downtown, preserve historic resources, support sustainability and livability, and encourage economic vitality; and

WHEREAS, the City has prepared, in conformance with the California Environmental Quality Act, an Environmental Impact Report for the Downtown Area Plan; and

WHEREAS, the City Council has certified the Final EIR and made all required findings pursuant to the California Environmental Quality Act; and

WHEREAS, Government Code Section 65863 states that jurisdictions shall not reduce residential density unless written findings are made supported by substantial evidence that the reduction is consistent with the adopted General Plan including the Housing Element and that remaining sites identified in the Housing Element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584; and

WHEREAS, the proposed reclassification of portions of the R-4 zoning district to the R-3 zoning district is consistent with the DAP policies for preserving the medium density residential area of the downtown; and

WHEREAS, the 2009 Housing Element estimates potential residential capacity for the Housing Element planning period to be roughly 2,500 to 3,000 units, which is adequate to address the 2007-2014 Regional Housing Needs Assessment of 2,431 units; and

WHEREAS, the 2009 Housing Element list of opportunity sites does not include sites on which the potential residential development capacity would be reduced by the proposed reclassification from R-4 to R-3, therefore the proposed reclassification will not limit the City's ability to meet its share of the regional housing need; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 2120 Milvia Street, Second Floor, Berkeley, California.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the General Plan is hereby amended as shown in Exhibit A.

BE IT FURTHER RESOLVED that the 2012 Downtown Area Plan is hereby adopted as shown in Exhibit B with Policy Revisions to be incorporated into final 2012 DAP as shown on Exhibit C.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that neither the General Plan Amendments in Exhibit A nor the 2012 Downtown Area Plan in Exhibit B would be adopted without the other being adopted, and to this extent they are not severable from each other but make up an integrated whole that is being adopted in a single action in order to ensure that the Downtown Area Plan can be implemented and to maintain the internal consistency of the General Plan.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley, that following Council approval staff shall publish revised General Plan amendments that reflect the changes approved herein, and that minor corrections such as to spelling, punctuation, or syntax may be made by staff without Council approval provided that they do not change the meaning of any goal, policy, or action.

#### EXHIBITS

A: General Plan Amendments

B: 2012 Downtown Area Plan

C: Policy Revisions

## Downtown Area Plan 2012: Proposed City of Berkeley General Plan Amendments

### LAND USE ELEMENT

#### Downtown and Other Commercial Mixed Use Areas

Downtown is the city's primary civic, office, and entertainment center, as well as a retail area. The major open space in the Downtown is the three-acre Martin Luther King Jr. Civic Center Park. Downtown Berkeley has important areas of strength. The Downtown is home to many arts organizations, including the Berkeley Repertory Theatre, the Aurora Theater, the Freight and Salvage Coffee House, the Berkeley Jazz School, and many other music and arts venues. [UC Berkeley expects to build a new University Art Museum and the Pacific Film Archive in the Downtown Area.](#) In addition to the arts and other businesses, the Downtown includes many restaurants, excellent transit service, and a customer base of residents, students, and office workers all within walking distance. Public investments in the arts, the Berkeley Public Library and Downtown infrastructure have helped to re-establish Downtown Berkeley as a vital arts and cultural center. Downtown Berkeley is also home to the Berkeley City College, Berkeley High School, a number of private educational institutions, and is bordered by the campus of the nation's premiere public university, making Downtown an important education and learning center.

~~Figure 2 shows the 1990 Downtown Plan's subareas. In each subarea the Plan established a "base" height limit, which could be exceeded through a bonus system to a "maximum" height. The Plan provided a bonus for projects that contain, residential, cultural uses or ground floor retail uses.~~

~~The table below includes the Downtown Plan's height and floor area ratio limits for each subarea.~~

<del>Downtown Plan Subarea</del>	<del>Base Height, Stories, and FAR</del>	<del>Maximum Height, Stories, FAR</del>
<del>Core</del>	<del>65', 5 stories, 4:1 FAR</del>	<del>87', 7 stories, 6:1 FAR</del>
<del>Oxford Edge</del>	<del>40', 3 stories, 3:1 FAR</del>	<del>60', 5 stories, 4:1 FAR</del>
<del>South</del>	<del>40', 3 stories, 3:1 FAR</del>	<del>60', 5 stories, 4:1 FAR</del>
<del>West</del>	<del>40', 3 stories, 3:1 FAR</del>	<del>50', 4 stories, 3.5:1 FAR</del>
<del>North 2</del>	<del>40', 3 stories, 3:1 FAR</del>	<del>55', 5 stories, 4:1 FAR</del>
<del>North 1</del>	<del>35', 3 stories, (residential) 3:1 FAR</del>	<del>Same as Base Same as Base</del>
	<del>50', 4 stories, (mixed-use) 3:1 FAR</del>	

By adopting Measure [R in 2010](#), the voters advised the City Council that greater heights and more intensity is acceptable in the Downtown, [With its adoption of the 2012 Downtown Area Plan](#), City Council adopted policies that allow increased height and intensity in response to [Measure R's](#) direction. [Under the DAP, three buildings up to 180](#)

feet, could occur in the Core Area (within one block of BART), and two UC buildings and two non-UC buildings could occur within the combined Core Area and Outer Core area. These buildings would be exceptions to a generally allowed height -- within the combined Core Area, Outer Core and Corridor area – of 60 feet “as a matter of right” and 75 feet with a special Use Permit. Also note that the DAP provides for the protection of adjacent residential neighborhoods, and calls for the rezoning of the Downtown Area’s southwest corner from R-4 to R-3 to reduce allowable building heights.

#### **Policy LU-16 Downtown Area Plan**

Take actions to attain goals and policies in the Downtown Area Plan, which is an element of the General Plan. Broad goals include:

1. Express and enhance Berkeley's unique social and cultural character in the Downtown.
2. Create an appealing and safe Downtown environment, with a comfortable pedestrian orientation.
3. Diversify, revitalize, and promote the Downtown economy.

#### **Policy LU-20 Downtown Pedestrian and Transit Orientation**

Reinforce the pedestrian orientation of the Downtown. (See also the Downtown Area Plan for related policies and actions.)

#### **Policy LU-21 Architectural Design in the Downtown**

**Require high-quality architectural design for all Downtown projects. (Also see *Urban Design and Preservation Policies UD-16 through UD-35.*)**

- A. Ensure that all Downtown area projects conform to the Downtown Area Plan, the Downtown Berkeley Design Guidelines, and the Urban Design and Preservation Element.
- B. New construction should fit into the context of the existing built environment and complement Downtown's historic character.
- C. Encourage infill development that is compatible with existing uses and improves the pedestrian environment and the streetscape.

#### **Policy LU-23 Transit-Oriented Development**

Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley. *(Also see Transportation Policy T-16 and Downtown Area Plan.)*

#### **Policy LU-24 Car-Free Housing in the Downtown**

Encourage development of transit-oriented, low-cost housing in the Downtown. *(Also see Transportation Policy T-16 and Downtown Area Plan.)*

#### **Downtown Mixed-Use**

The-Downtown Area contains areas characterized by high density commercial, office, arts, culture, and entertainment and residential development, which are designated as Downtown Mixed-Use (see Figure 4). The Downtown Area Plan establishes sub-districts subject to different intensities and types of use (see Figure 2 and the Downtown Area Plan). It is intended that the Downtown Mixed-Use area allow and encourage diverse uses and the highest building intensity in the City to promote a vibrant city-center



by increasing housing, supporting retail and cultural uses, and capitalizing on exceptional access to transit.

The Downtown Area also contains residential neighborhoods that lie outside of the Downtown Mixed-Use area and are designated low-medium (Zoning: R-2A), medium (R-3) or high density (R-4) residential, depending on the characteristics of the neighborhood. The DAP provides for the protection of adjacent residential neighborhoods, and calls for the rezoning of the Downtown Area's southwest corner from R-4 to R-3, thereby reducing allowable building heights and development pressures.

## **TRANSPORTATION ELEMENT**

### **Streets and Sidewalks**

The Transportation Element establishes policies for the movement of people, goods, and vehicles through the city. To successfully compete with other retail and entertainment destinations, Downtown must offer an attractive sense-of-place. In the Downtown Area, transportation design and operation decisions should give priority to pedestrians.

### **Policy T-34 Downtown and Southside Parking Management**

Manage the supply of Downtown and Southside public parking to discourage long-term all-day parking and increase the availability and visibility of short-term parking for local businesses. (Also see Economic Development and Employment Policy ED-6 and Downtown Area Plan.)

#### **Actions:**

- A. Offer reduced rate or free parking for carpools and van pools at City garages and selected street locations.
- B. Improve signage and access to existing public parking, including UC lots open to the public, in the Downtown and in the Southside.
- C. Increase all-day parking rates, maintain lower parking rates for short-term parking, eliminate monthly parking passes, provide "cash-out" programs, and extend hours of operation in City garages.
- D. Improve lighting and security in Downtown garages to encourage better utilization during off-peak hours.
- E. Require all City employees and officials to pay the fair market rate for parking.
- F. Limit employee parking based on need for a vehicle on the job, number of passengers carried, disability, and/or lack of alternative public transportation.
- G. Identify locations to increase short-term, on-street parking capacity through re-

striping and angled parking in commercial areas.

- H. Enforce existing short-term parking laws in commercial districts (e.g., meter parking) to alleviate abuse.
- I. Provide information on transit alternatives, commuter checks, and obtaining transit passes at City parking garages and on City parking tickets. Give this information to everyone who applies for a long-term parking permit in any City-owned parking lot or garage.
- J. Encourage visitors attending sporting events, entertainment events, theatrical performances and special events in the Downtown and Southside areas to use transit so that some existing parking remains available for other visitors.
- K. Increase the availability of short-term parking by encouraging better utilization of existing parking as recommended by the Southside/Downtown Transportation Demand Management Study, including making parking that is currently not available to the public, available for short-term parkers.
- L. Work with the business and arts community and owners of existing parking lots and garages, including the University, to cooperatively manage parking demand and parking resources, coordinate parking policies, parking rates and parking information programs, and widely disseminate parking maps and parking information.

**Policy T-40 Parking Impacts**

When considering parking impacts under the California Environmental Quality Act for residential projects with more than two units located in the Avenue Commercial, or High Density Residential land use classifications, any significant parking impacts identified that result from the project should be mitigated by improving alternatives to automobile travel and thereby reducing the need for parking. Examples include improvements to public transportation, pedestrian access, car sharing programs, and bicycle facility improvements.

Parking impacts for these projects should not be mitigated through the provision of additional parking on the site. For the Downtown Area, a comprehensive parking strategy should be developed ([see Downtown Area Plan](#)). The City finds that:

- 1. Parking supply and demand may easily be adjusted by changing local pricing policies and by changing how the supply is managed.
- 2. As the parking supply increases or parking costs decrease, automobile use becomes a more attractive transportation alternative and demand for parking increases. As parking supply decreases and its price increases, demand decreases.
- 3. Increasing the parking supply increases automobile use, which causes a measurably negative impact on the environment.

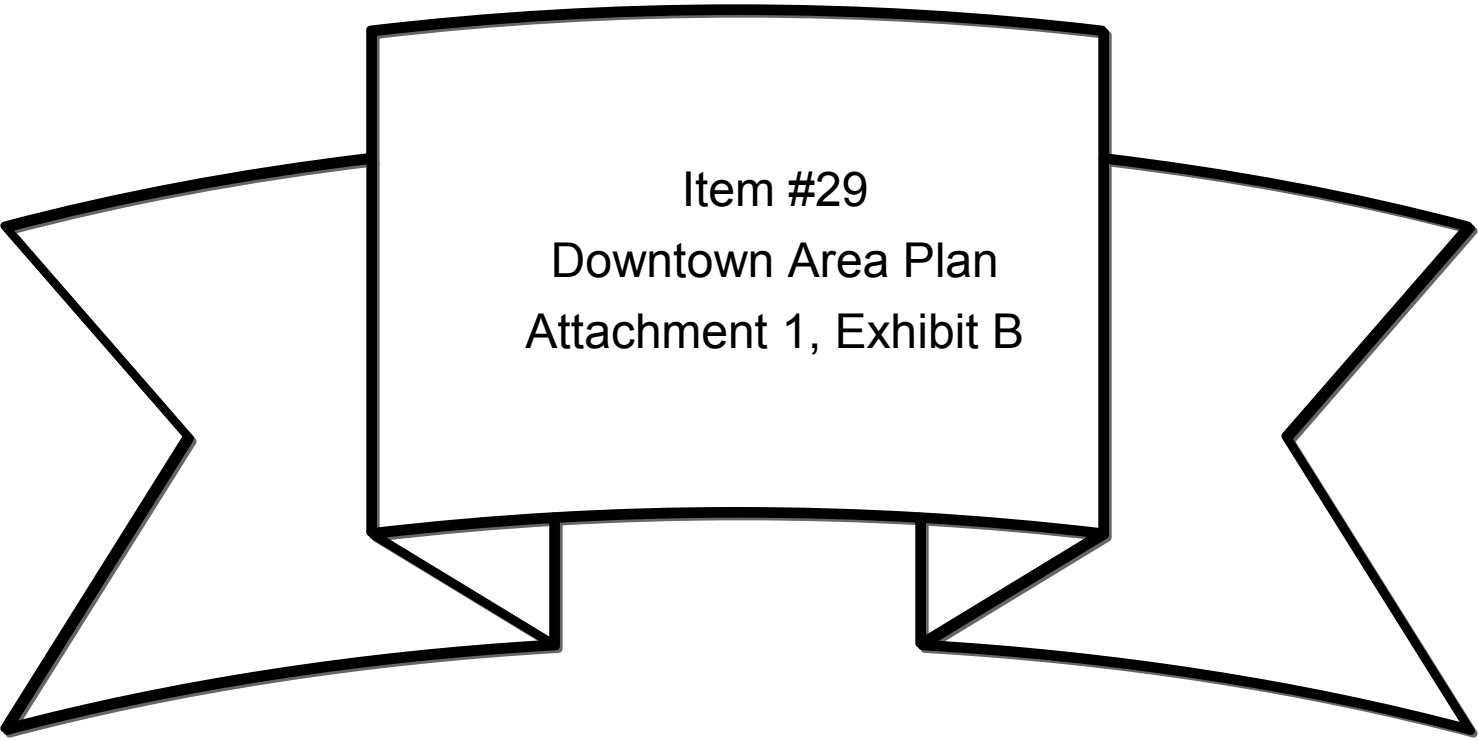
**HOUSING ELEMENT**

**Policy H-18 City-Owned Sites**

When appropriate and feasible, use City-owned or -controlled sites for affordable housing and/or mixed-use residential projects with a substantial portion of affordable units. (Also see *Land Use Policy LU-32* [and Downtown Area Plan](#).)

Action:

- A. Require development on the City-owned the Ashby BART air rights (west of Adeline Street) to be residential mixed-use developments. If feasible, 50 percent or more of the housing units on these sites should be affordable for households with low or very low incomes.



Item #29  
Downtown Area Plan  
Attachment 1, Exhibit B

Please refer to the booklet distributed with the March 6, 2012 agenda packet for Attachment 1, Exhibit B (Proposed Downtown Area Plan). This material is also on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
<http://www.cityofberkeley.info>

Amendments to 2012 Draft Downtown Area Plan (February 2012)

**Regarding Capital Investment Downtown**, revise Goal ED-12 and the following policies to read:

**Policy LU-2.4e) – Developer Contributions for Open Space:** See Policy ED-12.1 – Revenues for Downtown, regarding revenue for Downtown streetscape and open space improvements.

**Policy AC-1.3b) – Alternative Modes and Transportation Demand Management (TDM):** See Policy ED-12.1 – Revenues for Downtown, regarding revenues to reduce Downtown car use, while simultaneously supporting the parking needs of local merchants and cultural/entertainment uses. Consider raising on-going TDM revenues through the creation of a Downtown Transportation Benefits District.

**Policy AC-3.6b) – Residential Parking:** See Policy ED-12.1 – Revenues for Downtown, regarding improvements in residential neighborhoods.

**Policy OS-3.3 – Public Funds:** See Policy ED-12.1 – Revenues for Downtown, regarding paying for street and open space improvements and upkeep of the public realm.

**Policy OS-4.2b) – Cleaning and Maintenance: See Policy ED-12.1 – Revenues for Downtown:** See Policy ED-12.1 – Revenues for Downtown, regarding on-going maintenance and repair of public spaces in Downtown.

**GOAL ED-12: INVEST RESOURCES DOWNTOWN TO SUPPORT CITY GOALS AND TO IMPROVE AND MAINTAIN A HIGH QUALITY OF ENVIRONMENT**

**Policy ED-12.1 – Revenues for Downtown:** Significant capital investment in Downtown infrastructure and a continued commitment to maintenance of a quality environment is necessary in order for the Downtown to develop and remain a vital and vibrant place to work, live, shop, dine and recreate. The City must balance the needs of all neighborhoods and commercial areas of the City, while at the same time remaining committed to investing resources in the Downtown to meet these goals. Potential sources of funding for investment in the Downtown include parking meter revenue, transient occupancy tax and various development fees that could be assessed. Each year prior to the City Council reviewing and adopting its annual budget, the Council will be provided with a report of the revenues generated from various sources in the Downtown. As part of the annual budget adoption, the Council will commit a meaningful amount of resources to both capital investment and maintenance for the Downtown area (see policies under Goal LU-2).

**Regarding Affordable Housing**, add two new policies to HC-4.2, Affordable Housing & Supportive Services to read:

f) Explore options for expanding the range of affordable housing opportunities in the Downtown by encouraging innovative housing types, including limited equity cooperatives, co-housing, housing land trusts and other options.

(g) Consider incentives for projects that provide a greater number of affordable units or that provide units at deeper affordability (50% or less of the Area Median Income).

**Regarding Contributions Required of All Development**, add the following language to Policy LU-2.1 to read:

g) The applicable public benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.

And, add the following last sentence to Policy LU-2.2: Additional Community Benefits for Buildings Exceeding 75 Feet:

The applicable public benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.

ORDINANCE NO. -N.S.

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

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

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

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

**SECTIONS:**

**23E.68.010 Applicability of Regulations**

**23E.68.020 Purposes**

**23E.68.030 Uses Permitted**

**23E.68.040 Downtown Arts District Overlay**

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

**23E.68.060 Use Limitations**

**23E.68.065 Performance Standards**

**23E.68.070 Development Standards**

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

**23E.68.080 Parking – Number of Spaces**

**23E.68.085 Green Building Provisions**

**23E.68.090 Findings**

**23E.68.010 Applicability of Regulations**

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

**23E.68.020 Purposes**

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

**23E.68.030 Uses Permitted**

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

**Table 23E.68.030**

<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 7,500 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	<u>UP(PH)Prohibited</u>	<u>Prohibited if within 1,400 feet of a school or public park</u>
<b>Personal and Household Services</b>		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)
Laundromats	<u>AUPUP(PH)</u>	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
<b>Offices</b>		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section 23E.68.040
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents Within the A.D.O.	ZC AUP	Subject to additional requirements; See Section 23E.68.060.E Within the Arts District Overlay, see Section



**Table 23E.68.030**

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

**Table 23E.68.030**

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

**Table 23E.68.030**

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

**Table 23E.68.030**

<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
R-District		
<b>Combination Commercial/Residential Uses</b>		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F  Subject to Section 23E.68.070
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
<b>Uses Permitted in Residential Districts</b>		
Accessory Buildings and Structures	As per R-5 District	See Table 23D.44.030
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	

**Table 23E.68.030**

**Use and Required Permits**

<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
Dwelling Units, including multifamily developments	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Group Living Accommodations	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Hospitals	UP(PH)	
Residential Hotels, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to see Section 23E.68.060.F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing: Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Change of use of an existing dwelling unit  Subject to Section 23E.68.070
<b>Miscellaneous Uses</b>		
Automatic Teller Machines When not a Part of a Retail Financial Service Exterior Interior	UP(PH) AUP	
Cafeteria, Employee or	UP(PH)	

**Table 23E.68.030**

**Use and Required Permits**

<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
Residential		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording Studios	AUP	
Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
<b>Legend:</b>		
ZC -- Zoning Certificate AUP -- Administrative Use Permit UP(PH) -- Use Permit, public hearing required		

45  
46 B. The Zoning Officer may approve an Administrative Use Permit for any use that he or  
47 she determines is compatible with the purposes of the C-DMU District. Any use that  
48 is not listed that is not compatible with the purposes of the C-DMU District shall be  
49 prohibited.

50  
51 **23E.68.040 Downtown Arts District Overlay**

52 A. The City Council finds and declares that:

53 1. The purpose of the Downtown Arts District Overlay is to create a core of  
54 cultural activities and supportive retail and commercial uses which would  
55 generate more pedestrian vitality in the downtown, promote Berkeley's  
56 regional leadership in the arts, and encourage broader economic revitalization  
57 of the area.

58 2. To this end, the use and appearance of ground floor spaces in the Downtown  
59 Arts District are important to the success of the City's plans for the area, since  
60 these spaces define the ambiance and character of the area for pedestrians.  
61 The types of uses which would enhance the Arts District include ground floor  
62 retail uses which would contribute to the cultural vitality of the area, full- and  
63 quick-service restaurants, and uses which provide pedestrian scale and  
64 siting. Desirable new development would include projects which fully utilize  
65 the development potential of the property and incorporate continuity in street  
66 facades. Uses such as food uses with seating, art galleries, bookstores and  
67 other culturally compatible and pedestrian-oriented uses will contribute to the  
68 area's economic vitality.

69 B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district  
70 shall consist of:

- 71 1. All buildings with street frontage on Addison Street between Shattuck Avenue  
72 and Milvia Street; and
- 73 2. All buildings with street frontage on the two blocks along the southbound west  
74 wing of Shattuck Avenue between University Avenue and Center Street, and  
75 all addresses on the east side of Milvia Street between University Avenue and  
76 Center Street.
- 77 3. These proposed boundaries are as set forth in the map on file with the City  
78 Clerk and incorporated by reference herein.
- 79 C. No new carry out food service ~~restaurant-store~~ or office use located on the ground  
80 floor adjacent to a street frontage may be established within the Downtown Arts  
81 District Overlay, either as a new use or as a change of use, unless an Administrative  
82 Use Permit is approved by the Zoning Officer subject to the findings in Section  
83 23E.68.090.C.

84 **23E.68.050 Construction of New Floor Area: Use Permits**

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

90 **23E.68.060 Use Limitations**

- 91 A. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00  
92 a.m. except as authorized by an Administrative Use Permit, and in accordance with  
93 Section 23E.16.010.
- 94 B. Any use that is incidental to the primary use of a building or property shall be subject  
95 to the permit requirements identified in the Uses Incidental to a Permitted Use  
96 heading in Table 23E.68.030.
- 97 C. Any activity or use that occurs outside of a building shall be subject to the permit  
98 requirements identified in the Parking, Outdoor, and Exterior Window Uses heading  
99 in Table 23E.68.030.
- 100 D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement  
101 Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the  
102 requirements of this Chapter.
- 103 E. For new uses identified in Table 23E.68.030 that are located on the ground floor  
104 adjacent to a street frontage, storefront windows are required to include a window  
105 display or to be transparent and provide pedestrian viewing a minimum of 10 feet  
106 into the storefront area.
- 107 F. In ~~construction of~~ new buildings constructed on Public Serving Frontages, as  
108 illustrated in Chapter Subtitle 23F-E and the Downtown Area Plan, entrances to



109 individual dwelling units and to living quarters in Group Living Accommodations are  
 110 prohibited on the street-facing side of the street-level floor.

111 **23E.68.065 Performance Standards**

112 Projects that may create potentially significant environmental impacts as described in  
 113 the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring  
 114 Program adopted concurrently with this Chapter.

115 **23E.68.070 Development Standards**

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

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

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

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

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

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

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

- 121 1. In the combined Core and Outer Core areas, up to two buildings of over 75  
 122 feet but not more than 120 feet.

- 123 2. In the Core area, up to three buildings over 120 feet but not more than 180  
 124 feet. Allowed uses in such buildings include:
- 125 a. Two residential buildings with ground-level commercial uses.
- 126 b. One hotel building with conference facilities and accessory commercial  
 127 uses.
- 128 3. Application process for buildings over 75 feet in height:
- 129 a. Applications for any of the five buildings over 75 feet in height may be  
 130 submitted on July 1, 2012. If no applications that satisfy the submittal  
 131 requirements as determined by the Zoning Officer are submitted on  
 132 that date, then the next deadline to submit applications will be no later  
 133 than six months from that date, with application opportunity dates at six  
 134 month intervals until the first application has been submitted. Once the  
 135 first application has been submitted, then the application opportunity  
 136 date will occur once yearly on the anniversary of the date of the first  
 137 submittal.
- 138 b. An project shall secure a position as one of the five allowed buildings  
 139 over 75 feet in height following final Use Permit approval. Such Use  
 140 Permits shall include a condition of approval that establishes a  
 141 schedule for: submittal of a building permit application, timely response  
 142 to plan check comments, payment of building permit fees such that a  
 143 building permit can be issued, and commencement of construction.  
 144 The process for allowing extension of the timeline requirements, if any,  
 145 shall be specified in the condition.
- 146 c. Failure of a permittee to strictly comply with the schedule established  
 147 by the Use Permit shall be grounds for revocation of the Use Permit  
 148 pursuant to Chapter 23B.60.
- 149 C. No yards for main buildings, accessory buildings, or accessory structures shall be  
 150 required, except as required in Section 23E.04.050 ~~and 23E.04.060~~ for commercial  
 151 lots abutting or confronting residential zoning, ~~and~~ In addition buildings shall be set  
 152 back from property lines as set forth in the table and provisions below, unless  
 153 modified by a Use Permit subject to the findings in Section 23E.68.090.F.

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

feet				
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' min.
Over 120 feet	15' minimum	15' minimum	15' minimum	15' min.

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

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2. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.

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3. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that ~~—~~ this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, ~~the Police Station,~~ and Fire Station 2. However, this provision will apply for all lots that confront with frontage on the Martin Luther King Jr. Way right-of-way, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height.

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4. For lots that confront with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the street-facing Shattuck Avenue property line where the building exceeds 65 feet in height.

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5. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.

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

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1. For residential uses, 80 square feet of usable open space per unit.

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a. Each square foot of such open space that is provided as Privately-Owned Public Open Space shall be counted as two square feet of required on-site open space for residential uses.

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2. For non-residential uses, one (1) square foot of privately-owned public open space per 50 square feet of commercial floor area.

186 3. In-lieu of providing the open space required by this Section on-site, an  
 187 applicant may pay an in-lieu fee to help fund the Streets and Open Space  
 188 Improvement Plan (SOSIP) and/or construct public improvement consistent  
 189 with the SOSIP, as specified in the Use Permit, provided the Board makes the  
 190 findings in [subdivision Section 23E.68.090.G](#)†

191 **23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)**

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

195 **23E.68.080 Parking – Number of Spaces**

- 196 A. All parking shall be provided in accordance with the requirements of this Section and  
 197 Chapter 23E.28, except as set forth in this Section. No change of commercial use  
 198 within the existing floor area of a building shall be required to meet the off-street  
 199 parking requirements of this Section or Chapter 23E.28, unless the structure has  
 200 been expanded to include new floor area.
- 201 B. The District minimum standard vehicle parking space requirement for all floor area is  
 202 one and a half spaces per each 1,000 square feet of gross floor area or as required  
 203 for the uses listed in the following table.

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

- 204 1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five  
 205 percent (25%) of existing gross floor area, whichever is less, are exempt from  
 206 the parking requirements for new floor area.
- 207 2. Parking spaces shall be provided on-site, or off-site within 800 feet subject to  
 208 securing an AUP and in compliance with Section 23E.28.030.
- 209 C. Bicycle parking spaces shall be provided for new construction at the ratio of one  
 210 space per 2,000 square feet of gross floor area of commercial space, and in  
 211 accordance with the requirements of Section 23E.28.070.
- 212 D. The vehicle parking space requirements of this Section may be reduced or waived  
 213 through payment of an in-lieu fee to be used to provide enhanced transit services,  
 214 subject to securing a Use Permit subject to the finding in section 23E.68.090.H or

215 modified with an AUP subject to the findings in 23E.28.140.

216 E. New construction that results in an on-site total of more than 25 publicly-available  
217 parking spaces shall install dynamic signage to Transportation Division  
218 specifications, including, but not limited to, real-time garage occupancy signs at the  
219 entries and exists to the parking facility with vehicle detection capabilities and  
220 enabled for future connection to the regional 511 Travel Information System or  
221 equivalent, as determined by the Zoning Officer in consultation with the  
222 Transportation Division Manager.

223 F. Occupants of residential units or GLA units constructed newly constructed or  
224 converted from a non-residential use shall not be eligible for Residential Parking  
225 Permit (RPP) permits under Chapter 14.72 of the BMC.

226 G. For any new building with residential units or structures converted to a residential  
227 use, required parking spaces shall be leased or sold separate from the rental or  
228 purchase of dwelling units for the life of the dwelling unit, unless the Board grants a  
229 Use Permit to waive this requirement for projects which include financing for  
230 affordable housing subject to the finding in section 23E.68.090.I.

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

236 1. A pass for unlimited local bus transit service; or

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

242 I. For residential structures constructed or converted from a non-residential use that  
243 require vehicle parking under Section 23E.68.080.B, required parking spaces shall  
244 be designated as vehicle sharing spaces in the amounts specified in the following  
245 table. If no parking spaces are provided pursuant to Sections 23E.68.080.D or  
246 [23E.28.090.C](#), no vehicle sharing spaces shall be required.

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

- 247 1. The required vehicle sharing spaces shall be offered to vehicle sharing  
248 service providers at no cost.
- 249 2. The vehicle sharing spaces required by this Section shall remain available to  
250 a vehicle sharing service provider as long as providers request the spaces. If  
251 no vehicle sharing service provider requests a space, the space may be  
252 leased for use by other vehicles. When a vehicle sharing service provider  
253 requests such space, the property owner shall make the space available  
254 within 90 days.
- 255 J. For residential structures constructed or converted from a non-residential use  
256 subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to  
257 issuance of a Certificate of Occupancy the property owner shall submit to the  
258 Department of Transportation a completed Parking and Transportation Demand  
259 Management (PTDM) compliance report on a form acceptable to the City, which  
260 demonstrates that the project is in compliance with the applicable requirements of  
261 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner  
262 shall submit to the Department of Transportation an updated PTDM compliance  
263 report on an annual basis.

264 **23E.68.085 Green Building Provisions**

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

273 **23E.68.090 Findings**

- 274 A. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board  
275 must make the findings required by Section 23B.32.040, as well as the findings  
276 required by the following paragraphs of this Section to the extent applicable.
- 277 B. A proposed use or structure must:
- 278 1. Be compatible with the purposes of the District; and
- 279 2. Be compatible with the surrounding uses and buildings.
- 280 C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a  
281 new carry out food [service](#) store or ground floor office use within the Downtown Arts  
282 District Overlay, the Zoning Officer must find that:
- 283 1. The project meets the purposes of the Arts Overlay District as set forth  
284 Section 23E.68.040; and

- 285           2. The location, size, type, appearance, and signage of the proposed use will:
- 286                   a. Animate and enhance the pedestrian experience on the street; and
- 287                   b. Be generally open to the public evenings and on weekends, whenever
- 288                               practicable.
- 289 D. In order for any Use Permit to be granted under Section 23E.68.050 for [additional](#)
- 290 [new](#) floor area, the Board must find that:
- 291           1. The addition or new building is compatible with the visual character and form
- 292                   of the District; and
- 293           2. No designated landmark structure, structure of merit, or historic district in the
- 294                   vicinity would be adversely affected by the appearance or design of the
- 295                               proposed addition.
- 296 E. In order to approve a Use Permit for buildings over 75 feet in height under Section
- 297 23E.68.070.B, the Board must find that the project will provide significant community
- 298 benefits, either directly or by providing funding for such benefits to the satisfaction of
- 299 the City, beyond what would otherwise be required by the City. These may include,
- 300 but are not limited to: affordable housing, supportive social services, green features,
- 301 open space, transportation demand management features, job training, and/or
- 302 employment opportunities. [The applicable public benefit requirements of this](#)
- 303 [Chapter shall be included as conditions of approval and the owner shall enter into a](#)
- 304 [written agreement that shall be binding on all successors in interest.](#)
- 305 F. In order to approve a Use Permit for modification of the set back requirements of
- 306 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably
- 307 limit solar access or create significant increases in wind experienced on the public
- 308 sidewalk.
- 309 G. In-lieu open space.
- 310           1. In order to approve a Use Permit under Section 23E.68.070.D for payment of
- 311                   an in-lieu fee, the Board must find that the in-lieu payment will support timely
- 312                   development of open space improvements that will serve the needs of both
- 313                               project residents and other people living in and using the downtown.
- 314           2. In order to approve a Use Permit under Section 23E.68.070.D for construction
- 315                   of public improvements consistent with the Downtown Streets and Open
- 316                   Space Improvement Plan (SOSIP), the Board must find that the public
- 317                               improvements:
- 318                   a. Will be located within the vicinity of the project and are consistent with
- 319                               the SOSIP; and
- 320                   b. The improvements will be coordinated with other on-going or approved

321 SOSIP or other right-of-way improvements in the vicinity, and will not  
322 create a hazardous situation or an unusual appearance in the  
323 downtown; and

324 c. The improvements will be completed prior to issuance of a certificate of  
325 occupancy for the project, unless otherwise allowed by the Conditions  
326 of Approval.

327 H. In order to approve a Use Permit to allow a reduction of required vehicle parking  
328 spaces under Section 23E.68.080.D, which may be reduced to zero, the Board must  
329 find that the applicant will pay an in-lieu fee to a fund established by the City that  
330 provides enhanced transit services.

331 I. In order to approve a Use Permit to allow parking spaces to be leased or sold in  
332 combination with the proposed affordable housing units under Section  
333 23E.68.080.G, the Board must find that applicant has demonstrated that the  
334 combined parking is necessary for the purpose of obtaining financing or meeting  
335 other obligations.

336 Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the  
337 display case located near the walkway in front of Council Chambers, 2134 Martin Luther  
338 King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each  
339 branch of the Berkeley Public Library and the title shall be published in a newspaper of  
340 general circulation.

341



ORDINANCE NO. -N.S.

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

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

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

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

**SECTIONS:**

**23E.68.010 Applicability of Regulations**

**23E.68.020 Purposes**

**23E.68.030 Uses Permitted**

**23E.68.040 Downtown Arts District Overlay**

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

**23E.68.060 Use Limitations**

**23E.68.065 Performance Standards**

**23E.68.070 Development Standards**

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

**23E.68.080 Parking – Number of Spaces**

**23E.68.085 Green Building Provisions**

**23E.68.090 Findings**

**23E.68.010 Applicability of Regulations**

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

**23E.68.020 Purposes**

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

**23E.68.030 Uses Permitted**

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

**Table 23E.68.030**

<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 7,500 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
<b>Personal and Household Services</b>		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
<b>Offices</b>		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section 23E.68.040
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents Within the A.D.O.	ZC AUP	Subject to additional requirements; See Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040

**Table 23E.68.030**

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

**Table 23E.68.030**

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

**Table 23E.68.030**

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

<b>Table 23E.68.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
<b>Combination Commercial/Residential Uses</b>		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F  Subject to Section 23E.68.070
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
<b>Uses Permitted in Residential Districts</b>		
Accessory Buildings and Structures	As per R-5 District	See Table 23D.44.030
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, including	UP(PH)	Subject to additional

**Table 23E.68.030**

<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
multifamily developments		requirements; see Section 23E.68.060.F
Group Living Accommodations	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Hospitals	UP(PH)	
Residential Hotels, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to see Section 23E.68.060.F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing: Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Change of use of an existing dwelling unit  Subject to Section 23E.68.070
<b>Miscellaneous Uses</b>		
Automatic Teller Machines When not a Part of a Retail Financial Service Exterior Interior	UP(PH) AUP	
Cafeteria, Employee or Residential	UP(PH)	

**Table 23E.68.030**

<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording Studios	AUP	
Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other	UP(PH)	Subject to the requirements



<b>Table 23E.68.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
Telecommunication Facilities		and findings of Section 23C.17.100
<b>Legend:</b>		
ZC -- Zoning Certificate		
AUP -- Administrative Use Permit		
UP(PH) -- Use Permit, public hearing required		

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

**23E.68.040 Downtown Arts District Overlay**

- A. The City Council finds and declares that:
- 3. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley’s regional leadership in the arts, and encourage broader economic revitalization of the area.
  - 4. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City’s plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, full- and quick-service restaurants, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area’s economic vitality.

B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:

1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and
  2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.
  3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.
- C. No new carry out food service store or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

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

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

**23E.68.060 Use Limitations**

- G. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00 a.m. except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.
- H. Any use that is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.68.030.
- I. Any activity or use that occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading in Table 23E.68.030.
- J. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.
- K. For new uses identified in Table 23E.68.030 that are located on the ground floor adjacent to a street frontage, storefront windows are required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
- L. In new buildings constructed on Public Serving Frontages, as illustrated in Subtitle 23F and the Downtown Area Plan, entrances to individual dwelling units and to living

quarters in Group Living Accommodations are prohibited on the street-facing side of the street-level floor.

**23E.68.065 Performance Standards**

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

**23E.68.070 Development Standards**

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

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

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

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

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

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

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

1. In the combined Core and Outer Core areas, up to two buildings of over 75 feet but not more than 120 feet.

2. In the Core area, up to three buildings over 120 feet but not more than 180 feet. Allowed uses in such buildings include:
  - c. Two residential buildings with ground-level commercial uses.
  - d. One hotel building with conference facilities and accessory commercial uses.

3. Application process for buildings over 75 feet in height:

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

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

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

feet				
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' min.
Over 120 feet	15' minimum	15' minimum	15' minimum	15' min.

1. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
6. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
7. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
8. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
9. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.

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

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

findings in Section 23E.68.090.G.

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

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

**23E.68.080 Parking – Number of Spaces**

- K. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area.
- L. The District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.

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

- 3. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.
  - 4. Parking spaces shall be provided on-site, or off-site within 800 feet subject to securing an AUP and in compliance with Section 23E.28.030.
- M. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070.
  - N. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section 23E.68.090.H or modified with an AUP subject to the findings in 23E.28.140.
  - O. New construction that results in an on-site total of more than 25 publicly-available parking spaces shall install dynamic signage to Transportation Division

specifications, including, but not limited to, real-time garage occupancy signs at the entries and exists to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.

- P. Occupants of residential units or GLA units constructed newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.
- Q. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.
- R. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.
  - 3. A pass for unlimited local bus transit service; or
  - 4. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
- S. For residential structures constructed or converted from a non-residential use that require vehicle parking under Section 23E.68.080.B, required parking spaces shall be designated as vehicle sharing spaces in the amounts specified in the following table. If no parking spaces are provided pursuant to Sections 23E.68.080.D no vehicle sharing spaces shall be required.

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

- 1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.

2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.
- T. For residential structures constructed or converted from a non-residential use subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I, prior to issuance of a Certificate of Occupancy the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable requirements of 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I. Thereafter, the property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

### **23E.68.085 Green Building Provisions**

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

### **23E.68.090 Findings**

- D. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board must make the findings required by Section 23B.32.040, as well as the findings required by the following paragraphs of this Section to the extent applicable.
- E. A proposed use or structure must:
  3. Be compatible with the purposes of the District; and
  4. Be compatible with the surrounding uses and buildings.
- F. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new carry out food service store or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:
  3. The project meets the purposes of the Arts Overlay District as set forth Section 23E.68.040; and
  4. The location, size, type, appearance, and signage of the proposed use will:



- c. Animate and enhance the pedestrian experience on the street; and
  - d. Be generally open to the public evenings and on weekends, whenever practicable.
- G. In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that:
  - 1. The addition or new building is compatible with the visual character and form of the District; and
  - 2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.
- H. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.
- I. In order to approve a Use Permit for modification of the set back requirements of 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- J. In-lieu open space.
  - 1. In order to approve a Use Permit under Section 23E.68.070.D for payment of an in-lieu fee, the Board must find that the in-lieu payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
  - 2. In order to approve a Use Permit under Section 23E.68.070.D for construction of public improvements consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP), the Board must find that the public improvements:
    - d. Will be located within the vicinity of the project and are consistent with the SOSIP; and
    - e. The improvements will be coordinated with other on-going or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the

downtown; and

- f. The improvements will be completed prior to issuance of a certificate of occupancy for the project, unless otherwise allowed by the Conditions of Approval.
- K. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.D, which may be reduced to zero, the Board must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.
- L. In order to approve a Use Permit to allow parking spaces to be leased or sold in combination with the proposed affordable housing units under Section 23E.68.080.G, the Board must find that applicant has demonstrated that the combined parking is necessary for the purpose of obtaining financing or meeting other obligations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

1 ORDINANCE NO. –N.S.

2  
3 ADDING CHAPTER 23B.34 – GREEN PATHWAY  
4

5 BE IT ORDAINED by the Council of the City of Berkeley as follows:  
6

7 Section 1. That a new Chapter 23B.34 is added to the Berkeley Municipal Code  
8 to read as follows:  
9

10 **Chapter 23B.34**  
11 **GREEN PATHWAY**

- 12  
13 **23B.34.010 Applicability**  
14 **23B.34.020 Purpose**  
15 **23B.34.030 Eligibility Determination – Procedure for Identifying**  
16 **Potential Impacts of Green Pathway Projects on Historical**  
17 **Resources**  
18 **23B.34.040 Voluntary Green Pathway Election - Application**  
19 **23B.34.050 Requirements Applicable to all Green Pathway Projects**  
20 **23B.34.060 Additional Green Pathway Requirements Applicable to**  
21 **Large Buildings and Hotels**  
22 **23B.34.070 Development Standards for All Green Pathway Projects**  
23 **23B.34.080 Streamlined Entitlement Process for Projects Involving**  
24 **Only Buildings at or Below 75 Feet in Height**  
25 **23B.34.090 Streamlined Entitlement Process for Projects Involving**  
26 **Buildings Over 75 Feet in Height**  
27 **23B.34.100 Tolling**  
28 **23B.34.110 Compliance**  
29 **23B.34.120 City Manager Authority to Issue Regulations**  
30

31 **23B.34.010 Applicability**  
32

33 This Chapter applies only to development projects in the C-DMU district that:  
34

- 35 A. Do not propose alteration or demolition of any property that is an historical  
36 resource as defined by 14 California Code of Regulations 15064.5; and  
37  
38 B. Will not have a significant adverse impact on any adjacent historical resource  
39 as defined by 14 California Code of Regulations 15064.5.  
40

41 **23B.34.020 Purpose**  
42

43 The purpose of this Chapter is to implement the “Green Pathway” provisions of  
44 Measure R (2010) by providing a voluntary streamlined permit process for  
45 buildings that exceed the Green Building requirements applicable in the C-DMU

46 district and confer extraordinary public benefits that could not otherwise be  
47 obtained, as specified in this Chapter. More specifically, this Chapter establishes  
48 standards and requirements to provide greater clarity regarding the City's  
49 expectations for projects eligible for approval under these provisions and to  
50 ensure they will be designed and developed consistent with the Downtown Area  
51 Plan.

52  
53 **23B.34.030 Eligibility Determination – Procedure for Identifying Potential**  
54 **Impacts of Green Pathway Projects on Historical Resources**  
55

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

61  
62 A. A property owner or authorized agent thereof shall request the Landmarks  
63 Preservation Commission ("LPC") to determine whether the subject property,  
64 as well as each adjacent property, is an historical resource under 14  
65 California Code of Regulations 15064.5, by submitting a RFD. Potential  
66 historical resources include, but are not limited to properties identified in any  
67 of the following sources:

- 68  
69 1. Downtown Plan and EIR (Adopted 1990);
- 70  
71 2. State Historic Preservation Office California Historical Resources  
72 Information System Historical Resources Inventory for Alameda County,  
73 City of Berkeley (Most Recent); or
- 74  
75 3. Any site identified as a potential resource needing further evaluation in the  
76 Downtown Area Plan Historic Resource Evaluation (Architectural  
77 Resource Group, 5 November 2008).

78  
79 B. Processing of RFDs.

- 80  
81 1. A RFD shall not be accepted unless it is accompanied by proof that the  
82 applicant has posted a conspicuous notice on the subject property in a  
83 location that is readily visible from the street on which the structure or site  
84 has its major frontage. Such notice shall be in a form specified by the  
85 Zoning Officer.
- 86  
87 2. Upon receiving a RFD, the City shall contract with an independent  
88 consultant from a list of qualified consultants approved by the LPC to  
89 prepare an historic resource assessment. The costs of the assessment  
90 shall be borne by the applicant. Alternatively, the applicant for a RFD may

91 submit its own historic resource assessment, which shall then be subject  
92 to peer review by the City's consultant at the applicant's expense. If a  
93 property that is the subject of the RFD is not identified on any of the lists in  
94 Subdivision (A), the applicant's assessment ~~shall~~ may consist of a ~~brief~~  
95 statement of why the applicant believes the property does not include an  
96 historical resource.

97  
98 3. A RFD shall be deemed complete upon completion of the City consultants'  
99 historic resource assessment or peer review.

100  
101 4. The LPC shall commence its consideration of whether to designate a  
102 property that is the subject of a RFD at a public hearing at the first regular  
103 meeting that occurs no less than 21 days after the RFD is complete, and  
104 shall take final action no later than 90 days after it is complete. Notice of  
105 the public hearing shall be provided as set forth in Section 3.24.140.

106  
107 5. Any of the timelines specified in this Section may be extended at the  
108 request of the applicant. Failure to act within any of the timelines set forth  
109 in this Section, as they may be extended, shall constitute a decision to  
110 take no action to designate.

111  
112 C. If a property that is the subject of a RFD is not designated within the time  
113 limitations set forth in this Section, Chapter 3.24 shall not apply to that  
114 property unless and until the earliest of any of the following occurs:

115  
116 1. The expiration of two (2) years from the date of any final action not to  
117 designate the property; or

118  
119 2. If an application under this Chapter is submitted within that period, (1) the  
120 application is withdrawn or denied; or (2) any entitlement expires, is  
121 cancelled or revoked, or for any other reason ceases to have effect.

122  
123 D. Decisions by the Landmarks Preservation Commission under this Section  
124 shall be subject to appeal as set forth in Section 3.24.300, and certification as  
125 set forth in Section 3.24.190.

126  
127 E. If a subject property is determined to be an historical resource as defined by  
128 14 California Code of Regulations 15064.5, it shall not be processed as a  
129 Green Pathway Project under this Chapter.

130  
131 **23B.34.040 Voluntary Green Pathway Election – Application**

132  
133 A. The Green Pathway authorized by this Chapter is a voluntary development  
134 option under which applicants for development projects in the C-DMU district

135 may waive certain rights and agree to certain obligations the City could not  
136 otherwise impose in return for certain processing benefits.

137  
138 B. An application for processing pursuant to the Green Pathway shall include the  
139 information otherwise required by this Title for the entitlement sought, as well  
140 as:

- 141  
142 1. The applicant's commitment to enter into binding agreements to satisfy all  
143 applicable Green Pathway requirements set forth in this Chapter if the  
144 application is approved; and  
145  
146 2. Proof that the Landmarks Preservation Commission has not taken any  
147 action under Section 23B.34.030 to designate the subject property as a  
148 structure of merit or landmark under Chapter 3.24.  
149

150 C. Except as expressly specified in this Chapter, the requirements of this  
151 Chapter are in addition to, and do not alter or replace any other requirements  
152 or standards of this Title.  
153

154 D. Except as expressly specified in this Chapter, the requirements of this  
155 Chapter are in addition to, and do not alter or replace any other requirements  
156 or standards of Chapter 3.24, Landmarks Preservation Commission.  
157

### 158 **23B.34.050 Requirements Applicable to all Green Pathway Projects**

159  
160 All projects subject to the Green Pathway shall be subject to the following  
161 requirements:  
162

- 163 A. In addition to any other applicable affordable housing mitigation fee or  
164 requirement, aAt least twenty percent (20%) of the total units in any proposed  
165 multi-unit rental development shall be rented to very low income households  
166 whose annual income does not exceed 50 percent (50%) of the annual  
167 median income for Alameda County adjusted for household size based upon  
168 income levels published by the U.S. Department of Housing and Urban  
169 Development. Rents for these units shall be set at prices affordable to very  
170 low income households, as defined by Section 50053, of the California Health  
171 and Safety Code for the life of the project. As an alternative, an applicant  
172 may pay an in lieu fee to the Housing Trust Fund as established by Council.  
173  
174 B. The applicant shall waive, in writing, any rights under State Density Bonus  
175 Law, Section 65915 of California Government Code.  
176  
177 C. The applicant shall sign an agreement that no less than thirty percent (30%)  
178 of a project's construction workers shall be Berkeley residents.  
179

- 180 1. If insufficient Berkeley residents are available to fulfill the 30% local hire  
181 requirement, then the next tier of residents shall come from the East Bay  
182 Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El  
183 Cerrito, Emeryville, [Hayward](#), Richmond, Oakland, and San Leandro).  
184
- 185 2. If insufficient residents are available from the Green Corridor to fulfill the  
186 30% local hire requirement, then residents of Alameda County will be  
187 utilized to fulfill the local hire requirements.  
188
- 189 3. An applicant who agrees to require employment of Berkeley residents on  
190 another project the applicant is building or has approval to construct in  
191 Berkeley may count such employment toward the 30 % local hire  
192 requirement by providing the same documentation the City requires to  
193 demonstrate compliance with paragraphs 1 and 2 of this subdivision.  
194

195 D. Uses shall comply with the requirements and limitations of Sections  
196 23E.68.030 and 23E.68.060.  
197

198 **23B.34.060 Additional Green Pathway Requirements Applicable to Large**  
199 **Buildings and Hotels**  
200

201 In addition to the requirements of Section 23E.34.040, any Green Pathway  
202 project that includes either a hotel, a building over 75 feet in height, or a building  
203 with more than 100 units of housing, shall be subject to the following  
204 requirements:  
205

- 206 A. All construction workers shall be paid state prevailing wage as established by  
207 the California Department of Industrial Relations.  
208
- 209 B. To the extent that a sufficient number of qualified apprentices are reasonably  
210 available, no less than 16% of the construction workers shall be apprentices  
211 from a State Certified Apprenticeship program with a record of graduating  
212 apprentices.  
213
- 214 C. Employees in hotels with a height over 75 feet shall be paid prevailing wages  
215 as established by the Department of Industrial Relations for hotel employees.  
216 If the Department of Industrial Relations does not establish prevailing wages  
217 for hotel employees, such employees shall be paid wages consistent with  
218 area mean wages per occupational category.  
219
- 220 D. As a condition of approval for any Green Pathway subject to the requirements  
221 of this Section, the owner shall enter into a written agreement that shall be  
222 binding on all successors in interest.  
223  
224

225 **23B.34.070 Development Standards for All Green Pathway Projects**  
226

227 Green Pathway projects shall comply with the applicable development standards  
228 in Section 23E.68.070 and the following additional requirements:  
229

230 A. Building Setbacks Within View Corridors: To minimize interference with  
231 significant views, buildings that are 75 feet in height or less that are located  
232 on a corner lot at any intersection with University Avenue, Center Street, or  
233 Shattuck Avenue must include upper story setbacks as follows: any portion of  
234 a building between that exceeds 45 feet and 75 feet in height, must be set  
235 back from property lines abutting the street by at least one (1) foot for every  
236 one (1) foot by which the height exceeds 45 feet.  
237

238 B. Street Wall Façade: Notwithstanding the Downtown Design Guidelines, the  
239 street wall facade shall be architecturally modulated by volumes that are 50  
240 feet in width or less:  
241

- 242 1. Smaller modulations may be incorporated within larger volumes;  
243
- 244 2. Volumes along the street wall must be defined by structural bays and/or  
245 substantial reveals or offsets in the wall plane, and by changes in the  
246 rhythmic pattern of one (1) or more of the following features:  
247
  - 248 a. Window openings, oriel windows, or balconies;
  - 249 b. Awnings, canopies, or entrances;
  - 250 c. Arcades, columns, or pilasters;
  - 251 d. Materials and color; or
  - 252 e. Other architectural features.

253  
254 C. Shadow Analysis Required for Buildings With Heights Between Over 60 and  
255 75 Feet: Applications shall include diagrams showing:  
256

- 257 1. The extent of shading on public sidewalks and open spaces within a  
258 radius of 75 feet of the closest building wall that would be cast at two (2)  
259 hours after sunrise, 12 p.m., and two (2) hours before sunset, on March  
260 21, June 21, December 21, and September 21, by a building 60 feet in  
261 height that complies with all applicable setback requirements;  
262
- 263 2. Features incorporated into the building design, including, but not limited to,  
264 additional upper floor setbacks that will reduce the extent of shadowing of  
265 the proposed building to no more than 75 percent of the shadowing  
266 projected in paragraph 1 above.  
267

268 D. Height Restrictions on Green Pathway buildings: Consistent with the height  
269 standards of Measure R (adopted November 2, 2010), Section 4.B., as



270 required by Section 3 Paragraph 12, Green Pathway Buildings of exceptional  
271 height are restricted as follows:

- 272 1. 2 mixed-use buildings and one hotel/conference center in the Core,  
273 no more than 180 feet in height;
- 274 2. 2 buildings, up to 120 feet in height in the Core or Outer Core, ~~location~~  
275 ~~not specified~~.

- 276
- 277 E. To ensure that potential environmental impacts are mitigated to less than  
278 significant levels, projects under this Chapter will be subject to applicable  
279 measures identified in the adopted Mitigation Monitoring Program of the  
280 Downtown Area Plan Final EIR.

281

282 **23B.34.080 Streamlined Entitlement Process for Projects Involving Only**  
283 **Buildings at or Below 75 Feet in Height**

- 284
- 285 A. Notwithstanding anything to the contrary in this Title, Green Pathway projects  
286 that do not involve either hotels, buildings over 75 feet, or buildings with more  
287 than 100 units of housing, shall be approved as a matter of right with a Zoning  
288 Certificate if they comply with the applicable zoning requirements, standards  
289 and requirements in this Chapter and the Downtown Design Guidelines. Such  
290 projects shall be subject to design review under subdivision B and Chapters  
291 23E.08 and 23E.12.

- 292
- 293 B. If a proposed Green Pathway project is adjacent to a property that has been  
294 determined to be an historic resource under Section 23B.34.030, the  
295 application for a Green Pathway project shall include an analysis  
296 demonstrating how the project meets the Secretary of the Interior's Standards  
297 for the Treatment of Historic Properties, including with G guidelines for the  
298 treatment of cCultural Landscapes with respect to such adjacent property.

- 299
- 300 1. After determining that the application is complete, the Zoning Officer shall  
301 forward the analyses described in Subdivisions A and B of Section  
302 23B.34.030 to the Secretary of the LPC to place on the agenda for the  
303 next regular meeting of the LPC that occurs no less than 21 days  
304 thereafter. The LPC shall then have 90 days in which to evaluate the  
305 submission and provide any comments to the Design Review Committee.  
306

- 307 2. The Design Review Committee shall determine whether a project  
308 conforms to the Secretary of the Interior's Standards for the Treatment of  
309 Historic Properties and the associated guidelines, including the standards  
310 and guidelines for the treatment of historical-cultural landscapes, with  
311 respect to adjacent historical resources. A project that clearly conforms to  
312 those standards and guidelines shall be considered to not have a  
313 significant impact on the historical resource. If the Design Review  
314 Committee determines that the proposed project would have a significant

315 adverse impact on any adjacent historical resource and the project is not  
316 modified to avoid that impact, it shall not be processed as a Green  
317 Pathway Project.  
318

319 C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review  
320 Committee shall determine whether the project conforms to the Downtown  
321 Design Guidelines and shall take final action on the project no later than 90  
322 days from the date the application for a Green Pathway project, including for  
323 design review, is complete. When determining whether a project subject to  
324 review under this section conforms to the Downtown Design Guidelines, the  
325 Design Review Committee shall treat applicable guidelines as standards.  
326 The decision of the Design Review Committee regarding whether the project  
327 conforms to the Guidelines may be appealed directly to the City Council by  
328 filing an appeal stating the reasons for the appeal, along with the required fee,  
329 with the City Clerk within fourteen (14) days of the date of the Committee's  
330 action. Design Review appeals shall be limited to design issues.  
331

### 332 **23B.34.090 Streamlined Entitlement Process for Projects Involving** 333 **Buildings Over 75 Feet in Height** 334

335 Notwithstanding anything to the contrary in this Title, the Zoning Adjustments  
336 Board shall take final action on a Green Pathway project over 75 feet in height or  
337 any other project not processed under 23B.34.080 no later than 210 days after  
338 the application is complete, provided that this time limit shall be extended as  
339 necessary to comply with the California Environmental Quality Act. Such  
340 projects shall receive priority status in order to meet the review milestones set  
341 forth in this Section.  
342

### 343 **23B.34.100 Tolling** 344

345 Timelines under this Chapter shall be tolled during any proceedings pursuant to  
346 Chapter 3.24, relating to a Green Pathway project.  
347

### 348 **23B.34.110 Compliance** 349

350 The applicable public benefit requirements of this Chapter shall be included as  
351 conditions of approval and in a binding agreement for all Green Pathway  
352 projects.  
353

### 354 **23B.34.120 City Manager Authority to Issue Regulations** 355

356 The City Manager or his/her designee may promulgate rules and regulations  
357 pertaining to this Chapter, including, but not limited to, setting and administering  
358 gross rents and sale prices for below-market-rate units. These rules and  
359 regulations may also specify and require guarantees, including recorded

360 agreements and other appropriate measures necessary or convenient to assure  
361 that required below-market-rate units are provided to and occupied by very low  
362 income households, and that other public benefits set forth in this Chapter are  
363 secured.

364

365 Section 2. Copies of this Ordinance shall be posted for two (2) days prior to  
366 adoption in the display case located near the walkway in front of Council  
367 Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies  
368 of this Ordinance shall be filed at each branch of the Berkeley Public Library and  
369 the title shall be published in a newspaper of general circulation.

370

ORDINANCE NO. –N.S.

ADDING CHAPTER 23B.34 – GREEN PATHWAY

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

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

**Chapter 23B.34  
GREEN PATHWAY**

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

**23B.34.010 Applicability**

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

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

**23B.34.020 Purpose**

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

provide greater clarity regarding the City's expectations for projects eligible for approval under these provisions and to ensure they will be designed and developed consistent with the Downtown Area Plan.

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

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

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

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

B. Processing of RFDs.

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

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

#### **23B.34.040 Voluntary Green Pathway Election – Application**

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

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

### **23B.34.050 Requirements Applicable to all Green Pathway Projects**

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

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

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

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

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

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

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

### **23B.34.070 Development Standards for All Green Pathway Projects**

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

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



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

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

3. 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;
4. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

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

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

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

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

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

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

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

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

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

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

### **23B.34.100 Tolling**

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

### **23B.34.110 Compliance**

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

### **23B.34.120 City Manager Authority to Issue Regulations**

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

Section 2. Copies of this Ordinance shall be posted for two (2) days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

**RESOLUTION NO. ##,### N.S.**

**REQUIRING REVIEW OF 2012 DOWNTOWN AREA PLAN UPON APPROVAL  
OF THE FIRST BUILDING OVER 75 FEET**

WHEREAS, the City Council adopted the 2012 Downtown Area Plan (“DAP”) on March 20, 2012; and

WHEREAS, the City Council wants to monitor implementation of the DAP to ensure that it accomplishes the City’s goals in adopting it, and to enable the Council to begin the process of amending the DAP and its implementing zoning regulations, as it deems appropriate.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that as soon as possible after final zoning approval of the first building over 75 feet in the DAP area pursuant to the DAP and its implementing zoning regulations, the City Council will review the implementation of the DAP, including, but not limited to, development that has occurred pursuant to the DAP, other actions that have been taken to implement the DAP to date, and all pending applications for development under the DAP.