

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23E.04.050, 23E.36.070.D, 23E.56.070.C, 23E.64.040.D, 23E.64.070.B, 23E.64.070.C(1), AND 23E.64.070.D AND ADDING SECTIONS 23E.04.070, 23E.28.085, 23E.36.060.E, 23E.36.070.C(2), 23E.36.070.G, 23E.40.060.D, 23E.44.060.E, 23E.48.060.E, 23E.52.060.E, 23E.56.060.E, 23E.60.060.E, 23E.64.060.F, AND 23E.64.070.F TO PROVIDE SECOND STORY AND ABOVE TRANSITION SETBACKS AND CLARIFY EXISTING POLICY REGARDING REQUIRED YARDS ON LOTS IN THE C-1, C-W, C-T DISTRICTS ABUTTING RESIDENTIAL DISTRICTS, ESTABLISH DEVELOPMENT STANDARDS FOR GROUND FLOOR COMMERCIAL USES IN MIXED-USE BUILDINGS AND MODIFY THE OPEN SPACE REQUIREMENTS IN THE C-1 AND C-W DISTRICTS, AND IN COMMERCIAL DISTRICTS: LIMIT ROOFTOP OPEN SPACE, RESTRICT THE USE OF MECHANICAL PARKING LIFTS FOR REQUIRED PARKING, PROVIDE A MINIMUM 10 FOOT SETBACK FROM ABUTTING RESIDENTIAL DISTRICTS, AND RESTRICT RESIDENTIAL USES ON THE GROUND FLOOR OF MIXED-USE BUILDINGS.

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

Section 1. That Berkeley Municipal Code 23E.04.050 is amended to read as follows:

Section 23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

- A. Any structure that is located in a commercial District that abuts or confronts a lot or lots in a residential District shall conform to the following yard setback requirements unless otherwise specified by the provisions of an individual District or this section:
1. The minimum width of any side yard shall be five (5) feet;
 2. The minimum depth of any rear yard shall be ten (10) feet, or ten percent (10%) of the depth of the lot, whichever is greater;
 3. The minimum depth of any front yard, or the minimum width of any side yard on the street side, shall be the same required yard as specified for the adjacent residential District.
- B. Notwithstanding the foregoing, a minimum setback of 10 feet shall be provided along a property line abutting a residential District in all cases.
- C. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.

Section 2. That Berkeley Municipal Code 23E.04.070 is added and shall read as follows:

Section 23E.04.070 Usable Open Space

The area of each lot which is reserved for Usable Open Space shall conform to the standards of Section 23D.04.050. In addition, such areas shall satisfy the following conditions unless otherwise specified in individual District standards.

- A. With the exception of the C-2 District, no more than 75% of the required open space shall be located on the roof of the top story of a building. The Board may modify this requirement by Use Permit.
- B. In the C-1 and C-W Districts, Useable Open Space requirements shall be as set forth below. The Board may modify these requirements by Use Permit.

Number of Units	Open Space per unit (square feet)
0-10 units	200
11-20	190
21-30	180
31-40	170
41-50	160
51-60	150
61-70	140
71-80	130
81-90	120
91 units and above	110

Section 3. That Berkeley Municipal Code 23E.28.085 is added and shall read as follows:

Section 23E.28.085 Lift Parking

With the exception of the C-2 District, the following requirements for at grade required parking shall apply:

- A. In mixed-use buildings, all required commercial parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.
- B. In mixed-use and exclusively residential buildings, a minimum of 25% of the required residential parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.
- C. In exclusively commercial buildings (i.e., with no residential uses), a minimum of 25% of the required parking shall be provided at grade and may not be met by mechanical lift parking. The Zoning Officer may modify this requirement by Administrative Use Permit.

Section 4. That Berkeley Municipal Code 23E.36.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit pursuant to Sections 23E.36.090.A and B: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 5. That Berkeley Municipal Code 23E.36.070.C(2) is added and shall read as follows:

- 2. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, when a lot abuts a residential district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.

- a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and
- b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided from the property line of any abutting lot that is in a residential district.

Section 6. That Berkeley Municipal Code 23E.36.070.D is amended to read as follows:

- D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the Off-street Parking requirements for the Residential Use portion shall be as set forth in the R-3 District requirements and the Usable Open Space requirements shall be as set forth in Section 23E.04.070. The Board may issue a Use Permit to modify the Off-street Parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.36.090.C.

Section 7. That Berkeley Municipal Code 23E.36.070.G is added and shall read as follows:

- G. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, ground level commercial space shall have a minimum of 12 feet clear floor to ceiling height, shall be equivalent to a minimum area of 30% of the Project's land area, and shall occupy a minimum of 75% of the Project's primary street frontage. The Board may approve a Use Permit to modify these provisions.

Section 8. That Berkeley Municipal Code 23E.40.060.D is added and shall read as follows:

- D. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 9. That Berkeley Municipal Code 23E.44.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 10. That Berkeley Municipal Code 23E.48.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 11. That Berkeley Municipal Code 23E.52.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 12. That Berkeley Municipal Code 23E.56.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 13. That Berkeley Municipal Code 23E.56.070.C is amended to read as follows:

- C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:
 - 1. The fourth or higher story of any building located on a lot adjacent to Telegraph Avenue, between Bancroft Way and Dwight Way, shall be set back a minimum of ten feet from the Telegraph Avenue street line;
 - 2. When the subject lot abuts a residential district, the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.
 - a. The requirements of Section 23E.04.050 and 23E.04.060 shall apply; and
 - b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided, and on the fourth story and above a minimum 30-foot setback shall be provided, from the property line of any abutting lot that is in a residential district.

Section 14. That Berkeley Municipal Code 23E.60.060.E is added and shall read as follows:

- E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 15. That Berkeley Municipal Code 23E.64.040.D is amended to read as follows:

- D. All newly constructed main structures in designated nodes shall be at least two stories or 25 feet in height, except gasoline stations. In addition, the standards of 23E.64.070.F shall apply.

Section 16. That Berkeley Municipal Code 23E.64.060.F is added and shall read as follows:

- F. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 17. That Berkeley Municipal Code 23E.64.070.B is amended to read as follows:

- B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:

<i>Table 23E.64.070</i>			
Building Height Limitations *			
<u>Use Type</u>	<u>Height (ft.)</u>	<u>Stories (number)</u>	<u>Special Requirements/Limitations</u>
Commercial Only	40	3	
Live/Work Only	40	3	
Mixed Use	50	4	The 4th story must be used for residential or live/work purposes and must be setback 10 feet from the primary street frontage in addition to the Transition Setback of Section 23E.64.070.C(1).
Residential Only	40	3	
*Within designated nodes there is a minimum height requirement, see Section 23E.64.040.D			

Section 18. That Berkeley Municipal Code 23E.64.070.C(1) is amended to read as follows:

1. When a lot abuts a residential district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.
 - a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and
 - b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided, and on the fourth story and above a minimum 30-foot setback shall be provided, from the property line of any abutting lot that is in a residential district.

Section 19. That Berkeley Municipal Code 23E.64.070.D is amended to read as follows:

- D. Each lot shall contain the g minimum useable open space areas as set forth in Section 23E.04.070. The Board may approve a Use Permit to modify these provisions.

Section 20. That Berkeley Municipal Code 23E.64.070.F is added and shall read as follows:

- F. The following additional development standards and use restrictions shall be applicable to mixed-use and exclusively commercial projects. The Board may approve a Use Permit to modify these provisions.
 1. Ground level commercial space shall have a minimum of 12 feet clear floor to ceiling height.
 2. Ground level commercial space in designated nodes shall be equivalent to a minimum area of 30% of the Project's land area and shall occupy a minimum 75% of the Project's primary street frontage.
 3. Ground level commercial space in non-node areas shall be equivalent to a minimum area of 15% of the Project's land area and shall occupy a minimum 50% of the Project's primary street frontage.

Section 21. The proposed action is exempt from review under the California Environmental Quality Act because it can be seen with certainty that the proposed amendments would not have a significant effect on the environment.

Section 22. This ordinance shall be automatically repealed, and shall be of no force and effect if Proposition 90 on the November 2006 California ballot is not approved by the voters.

Section 23. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.