Office of the City Manager

ACTION CALENDAR
June 24, 2014

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Initiative Ordinance Amending Downtown Zoning Provisions and Creating Civic Center Historic District Overlay Zone

RECOMMENDATION

1) Take action on the initiative petition to:
a) Adopt the provisions of the measure without alteration.
-OR-
b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 4, 2014 General Municipal Election.

2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2006. The costs for 2010 and 2012 do not include the costs associated with Ranked Choice Voting as those costs are candidate-specific and not impacted by the number of measures placed on the ballot.

The dramatic cost increase in 2012 is primarily due to the need for an additional ballot card for Berkeley voters as a result of the high number of measures placed on the ballot.

	Election				
	Nov. 2006	**Nov. 2008**	**June 2010**	**Nov. 2010**	**Nov. 2012**
Total Cost	$272,581	$224,576	$191,732	$164,816	$367,884
No. of Measures	6	7	1	3	10
No. of Candidates	23	25	0	31	26

CURRENT SITUATION AND ITS EFFECTS

An initiative petition to adopt "Initiative Ordinance Amending Downtown Zoning Provisions and Creating Civic Center Historic District Overlay Zone" was filed with the

City Clerk on May 20, 2014. The proponents of this petition submitted 3,737 prima facie signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,638) or 10% (5,275) of the votes for all candidates for Mayor in November 2012 (52,750).

The Alameda County Registrar of Voters verified the signatures by conducting a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 443 valid signatures, which is 123% of the number of signatures needed to declare the petition sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on June 2, 2014.

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282(a) provides that "...the legislative body may submit an argument against the ordinance." The City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance.

BACKGROUND

Pursuant to the City Charter, Article XIII §92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the City Charter and the Elections Code.

ALTERNATIVE ACTIONS CONSIDERED

The alternative actions are listed in the Recommendation section of the report.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
   Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Petition

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE AMENDING DOWNTOWN ZONING PROVISIONS AND CREATING CIVIC CENTER HISTORIC DISTRICT OVERLAY ZONE

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 4, 2014 General Municipal Election, an initiative ordinance amending downtown zoning provisions and creating civic center historic district overlay zone; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 4, 2014; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY INITIATIVE ORDINANCE	
Shall an ordinance amending Zoning Ordinance provisions for downtown Berkeley to: eliminate streamlined permit procedures; reduce heights; require additional fees and other concessions by developers including affordable rental units; require higher LEED ratings; require payment of prevailing wages for specified categories of employees in new projects; modify permitted uses; increase parking requirements; and adopt an overlay in the Civic Center Historic District limiting heights to 50 feet and limiting permissible uses, be adopted?	YES NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits
A: Text of Ordinance

INITIATIVE ORDINANCE AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23B.34 (Green Pathway), CHAPTER 23E.68 (C-DMU Commercial Downtown Mixed Use District), SECTION 23F.04.010 (Definitions), AND ADDING CHAPTER 23E.98 (Civic Center District Overlay); PROVIDING STREAMLINED PERMIT PROCESSING AND ADDITIONAL HEIGHT FOR SPECIFIED DOWNTOWN PROJECTS IN EXCHANGE FOR SUBSTANTIAL ENVIRONMENTAL AND COMMUNITY BENEFITS; TO STRENGTHEN ENVIRONMENTAL, COMMUNITY BENEFIT AND PARKING REQUIREMENTS AND MODIFY USES, HEIGHT LIMITS AND SET BACKS FOR C-DMU PROJECTS; AND TO ESTABLISH A CIVIC CENTER DISTRICT OVERLAY.

The People of the City of Berkeley DO ORDAIN AS FOLLOWS:

Section 1. Findings and Purpose

The People of the City of Berkeley make the following findings:

WHEREAS, In November 2006 Berkeley voters overwhelmingly passed a Climate Action Plan that calls for reducing greenhouse gas emissions by 80% by the year 2050, making Berkeley one of the greenest cities in the United States; and

WHEREAS, In November 2010 Berkeley voters adopted Berkeley's Green Vision for the Downtown (Measure R) to create a Downtown that meets the City's climate action goals by concentrating housing, jobs and cultural destinations near transit, shops and amenities; preserving historic resources; promoting social equity by creating local jobs and affordable housing; enhancing open space and promoting green buildings; and helping make Berkeley one of the greenest cities in the United States; and

WHEREAS, Berkeley's Downtown should be an attractive destination and a commercial and residential neighborhood that is safe, oriented to pedestrians, offering open space, tree-lined streets and shops, services and amenities that make it possible to meet most daily needs near where people live and work; and

WHEREAS, Berkeley's Downtown should thrive economically, serving residents and visitors with attractive stores, parks and plazas, exceptional restaurants, and provide myriad community amenities with adequate public parking; and

WHEREAS, Berkeley's Downtown should celebrate its cultural, historic assets and its proximity to the University of California, renowned for its academic accomplishments and its physical beauty; and

WHEREAS, The Downtown should be the preferred location for new, transit oriented housing, providing homes for all income levels and family sizes, thus reducing the heavy volume of commute traffic into the City of Berkeley; and

WHEREAS, Downtown buildings should be constructed to the highest green standards and provide a limited number of new structures that are no higher than what exists now; and

WHEREAS, Implementation of Berkeley's Green Vision for the Downtown requires a new set of regulations to ensure that all of the environmental and community benefits promised are fully realized; and

WHEREAS, Community and environmental benefits, including green building standards, affordable housing, support for alternative transportation and bicycle parking, improved streetscapes and open space, car share and electric vehicle charging facilities, loans for small businesses, public restrooms, apartments for single, group and family living, and adequate parking for the disabled, for residents and for patrons of downtown establishments, must be specified to provide clarity for developers and for the community; and

WHEREAS: Berkeley's Civic Center is an irreplaceable public commons comprised of numerous historic buildings and a park, that must be preserved and revitalized as the heart of Berkeley's public and cultural life.

Purpose: The purpose of this measure is to implement Berkeley's Green Vision for the Downtown, approved by the voters as Measure R in 2010. This measure implements the Green Vision by specifying the community

benefits promised, adopting the highest green building standards, promoting the revitalization of our Downtown, and preserving Berkeley's historic Civic Center for public use.

Section 2. That Berkeley Municipal Code Chapter 23B.34 is hereby amended to read as follows:

Chapter 23B.34
GREEN PATHWAY

Sections:

23B.34.010 Applicability
23B.34.020 Purpose
~~**23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources**~~
23B.34.043 0 Voluntary Green Pathway Election--Application
23B.34.054 0 Public Benefit Requirements Applicable to All Green Pathway Projects
23B.34.065 0 Additional Green Pathway Requirements Applicable to Buildings Seeking Additional Bonus Height ~~Large Buildings and Hotels~~
23B.34.076 0 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**~~
Section 23B.34.079 0 Streamlined Entitlement Process For Projects Electing the Green Pathway ~~Projects Involving Buildings Over 75 Feet In Height~~
23B.34.~~100~~080 Tolling
23B.34.~~110~~090 Compliance
23B.34.~~120~~100 City Manager Authority to Issue Regulations

Section 23B.34.010 Applicability

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

A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and

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

Section 23B.34.020 Purpose

The purpose of this Chapter is to implement the "Green Pathway" provisions of Measure R (2010) by providing a voluntary streamlined permit process and the option of additional height 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~~ ensures they will be designed and developed consistent with the Downtown Area Plan.

~~**Section 23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources**~~

~~In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit~~

to the City a Request for Determination ("RFD"). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter 3.24.

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

1. Downtown Plan and EIR (Adopted 1990);Chapter 23B.34: Green Pathway

2. 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. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.043<u>0</u> 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~~ <u>specified</u> processing benefits <u>and height increases</u>.

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. t~~The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved.~~; and~~

~~2. Proof that the Landmarks Preservation Commission has not taken any action under Section 23B.34.030 to designate the subject property as a structure of merit or landmark under Chapter 3.24.~~

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

~~D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter 3.24, Landmarks Preservation Commission. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.054<u>0</u> <u>Public Benefit</u> Requirements Applicable to All Green Pathway Projects

~~All p~~ <u>In exchange for benefits conferred under the Green Pathway, projects electing</u> ~~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~~ <u>ten</u> percent (~~20~~<u>10</u>%) 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. <u>This 10% additional affordable housing requirement may not be satisfied by payment of an in lieu fee to the Housing Trust Fund or be reduced or mitigated by any other means. All units must be provided on site and rented to eligible households for the life of the project.</u>

~~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, Sections 65915-65918 of California Government Code.

C. The applicant shall sign an agreement that no less than fifty ~~thirty~~ percent (530%) of a project's construction workers shall be Berkeley residents.

1. If insufficient Berkeley residents are available to fulfill the 530% Berkeley ~~local~~ hire requirement, then the next tier of workers ~~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 workers ~~residents~~ are available from the Green Corridor to fulfill the 530% Berkeley ~~local~~ hire requirement, then residents of Alameda County will be utilized to fulfill the ~~local hire~~ requirements.

~~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. All construction workers shall be paid the Prevailing Wage for their occupation, as established by the California Department of Industrial Relations.

E. 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.

F. Employees in hotels, as well as building maintenance and security workers in all new buildings electing the Green Pathway shall be paid prevailing wages for their occupation, as established by the Department of Industrial Relations for hotel, building maintenance and security employees. If the Department of Industrial Relations does not establish prevailing wages for such occupational categories, such employees shall be paid wages consistent with area mean wages per occupational category.

G. As a condition of approval for any Green Pathway project subject to the requirements of this Section, the applicant shall enter into a written agreement that shall be binding on all successors in interest.

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

Section 23B.34.050 Additional Green Pathway Requirements Applicable to Buildings Seeking Additional Bonus Height

All Green Pathway projects seeking Additional Bonus Height pursuant to Table 23E.68.070 shall meet the following additional Public Benefit and Green Building requirements:

A. In addition to the 10% affordable housing requirement at Section 23B.34.040.A, and any other applicable affordable housing mitigation fee or requirement, all multi-unit rental development projects seeking Additional Bonus Height must provide another additional ten percent (10%) of the total units for rental 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. This 10% additional affordable housing requirement for projects seeking Additional Bonus Height may not be satisfied by payment of an in lieu fee to the Housing Trust Fund or be reduced or mitigated by any other means. All additional affordable housing units required pursuant to Section 23B.34.040.A and the added ten percent (10%) affordable housing units required pursuant to this Section of projects seeking Additional Bonus Height are cumulative, must be provided on site and must be rented to eligible households for the life of the project.

B. In addition to the SOSIP Impact Fee required by Section 23E.68.075, as adopted by the City, the applicant shall pay into the SOSIP Fund an additional fee equivalent to $1.00 per square foot of new Gross Floor Area.

C. The project shall provide easily accessed Public Restrooms, including separate facilities for men, women and the disabled, which shall be either operated by the applicant, or leased to the City at a rate of $1.00 a year.

D. Buildings shall attain a LEED Platinum rating as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.

E. 20% of the total number of dwelling units in the project must be designed to accommodate families, including adequate living, kitchen and closet space. At least 50% of such units must include two or more bedrooms and the remaining 50% must include three or more bedrooms. Such units must be reasonably dispersed throughout the project, and be comparable with all other units in design and in terms of appearance, materials and finish quality.

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

~~In addition to the requirements of Section 23B.34.050, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:~~

~~A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.Chapter 23B.34: Green Pathway~~

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

~~C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.~~

~~D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0~~6~~70 Development Standards for All Green Pathway Projects

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

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

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

1. Smaller modulations may be incorporated within larger volumes;

2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
   a. Window openings, oriel windows, or balconies;
   b. Awnings, canopies, or entrances;
   c. Arcades, columns, or pilasters;
   d. Materials and color; or
   e. Other architectural features.

C. Shadow Analysis Required for Buildings <u>with</u> Heights <u>at or above</u> ~~Between~~ 60 ~~and 75~~ Feet <u>in height</u>: Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet <u>or greater</u> in height that complies with all applicable setback requirements;

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

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

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

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

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

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

~~B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23B.34.030, the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.~~

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

~~2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.~~

~~C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review, is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee's action. Design Review appeals shall be limited to design issues. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0790 Streamlined Entitlement Process For Projects Electing the Green Pathway ~~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~~ a new application submitted on or after May 4, 2015 pursuant to Section 23E.68.070.B.3.b is deemed complete pursuant to Section 23B.24.050 or 210 days after a preexisting application, submitted prior to November 4, 2014 and modified and resubmitted at any time on or after November 4, 2014 pursuant to Section 23E.68.070.B.3.a is deemed complete pursuant to Section 23B.24.050, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such Green Pathway projects shall receive priority status in order to meet the review milestones set forth in this Section.

Section 23B.34.~~100~~080 Tolling

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

Section 23B.34.~~110~~090 Compliance

All ~~The~~ applicable Ppublic Bbenefit requirements pursuant to Section 23B.34.040 and Section 23B.34.050 of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

Section 23B.34.~~120~~100 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 3. That Berkeley Municipal Code Chapter 23E.68 is hereby amended to read as follows:

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

Sections:

23E.68.010 Applicability of Regulations
23E.68.020 Purpose
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, Environmental Requirements and Community Benefits
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 and applicable provisions in Chapter 23B.34 (Green Pathway) shall apply.

23E.68.020 Purpose

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. Properties within the Civic Center District Overlay are not subject to the uses specified herein and shall be subject to the uses permitted in Chapter 23E.98.

Table 23E.68.030

Use and Required Permits

Use	Classification	Special Requirements
Retail Sales		
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	
Personal and Household Services		
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
Offices		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section23E.68.040

Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Subject to additional requirements; see Section 23E.68.060.E
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section23E.68.040
Medical Practitioners	ZC	Including Holistic Health and Mental Health Practitioners
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section23E.68.040
Other Professionals and Government, Institutions, Utilities	ZC	Subject to additional requirements; see Section 23E.68.060.E
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section23E.68.040
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-Oriented Businesses	~~UP(PH)~~ Prohibited	~~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
Food Service Establishments:		
Carry Out Food Service Stores	AUP	Within the Arts District Overlay, see Section23E.68.040
Under 2,000 s.f.	ZC	
Within the A.D.O.	AUP	
Quick Service Restaurants	AUP	See Alcoholic Beverage Service above
Under 2,000 s.f.	ZC	
Full Service Restaurants	AUP	See Alcoholic Beverage Service above
Under 2,000 s.f.	ZC	
Group Class Instruction for Business, Vocational or Other	ZC	Subject to additional requirements; see Section 23E.68.060.E

Purposes		
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	
Automobile and Other Vehicle-Oriented Uses		
Automobile Parts Stores	Prohibited	
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals, and motorcycle stores	UP(PH)	
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	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building: When not abutting R-District When abutting R-District	 AUP UP(PH)	
Drive-in uses	Prohibited	
Surface Parking Lots: Eight (8) or fewer Off-street Parking Spaces More than eight (8) Off-street Parking Spaces	 AUP ~~Prohibited~~ UP(PH)	
Parking Structures	UP(PH)	

Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
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
Uses Incidental to a Permitted Use		
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	
Uses Permitted in Residential Districts		
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 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 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:		Change of use of an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	Subject to Section 23E.68.070
Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service		
Exterior	UP(PH)	
Interior	AUP	
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	~~AUP~~ Prohibited	~~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)	
Emergency Shelter		See Chapter 23C.10.

Up to 60 beds More than 60 beds	ZC 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 Broadcast Studios	 AUP 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 All Other Telecommunication Facilities	 AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100
Legend:		
ZC -- Zoning Certificate		
AUP -- Administrative Use Permit		
UP(PH) -- Use Permit, public hearing required		

B. 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:

1. 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.

2. 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 onto existing buildings.

23E.68.060 Use Limitations

~~A. 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.~~

A. Commercial uses in the C-DMU Core, Outer Core and Corridor Sub-Areas, as designated in the Official Zoning Map, may operate between the hours of 6:00 a.m. and 2:00 a.m., seven days per week; provided, that any use with alcohol sales or service shall conform to the following:

Establishments with alcohol sales or service located in the C-DMU Core, Outer Core and Corridor Sub-Areas may not stay open past midnight from Sunday through Thursday, and may operate until 2:00 a.m. on Fridays and Saturdays, unless later hours are authorized by a Use Permit under Section 23E.16.040 and provided the Board makes the required finding under Section 23E.68.090.H.

B. Commercial uses located in the C-DMU Buffer Sub-Area, as designated in the Official Zoning Map, may operate from 6:00 a.m. to 12:00 a.m. seven days per week, unless later hours are authorized by an Administrative Use Permit under Section 23E.16.010 and subject to the Board making the required finding under Section 23E.68.090.H. The Board may not extend the hours of operation later than midnight for establishments with alcohol sales or service located in the C-DMU Buffer Sub-Area.

~~B~~ C. 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.

~~C~~ D. 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.

~~D~~.E ~~Adult-oriented Businesses,~~ Alcoholic Beverage Sales or Service Uses~~,~~ and Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.

~~E.~~F 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.

~~F.~~G In new buildings constructed on Public Serving Frontages, as illustrated in Sub-title 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

A. 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~~

C-DMU Subarea**	Maximum Height Limit ***	Green Pathway - Bonus Height Limit ***	Green Pathway Additional Bonus Height Limit ***
Core Area	60 feet	May build up to 75 feet only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to all other applicable requirements of this Title.	Three buildings at up to 180 feet and two buildings at up to 120 feet permitted only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to the requirements in Section 23E.68.070.B and all other applicable requirements of this Title.
Outer Core	60 feet	May build up to 75 feet only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to all other applicable requirements of this Title.	Two buildings at up to 120 feet permitted only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to the requirements of Section 23E.68.070.B and all other applicable requirements of this Title.
Corridor	60 feet	None	None
Buffer	50 feet	None	None

* 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.

*** Up to 10 additional feet in height may be approved with a Use Permit, subject to the Parking and Penthouse provisions of Section 23E.68.080.G and the findings required by Section 23E.68.090.I.

~~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.~~

B. The Board may issue Use Permits for up to five buildings seeking Green Pathway Additional Bonus Height pursuant to 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 with Green Pathway Additional Bonus Height of over 75 feet but not more than 120 feet plus up to 10 additional feet in height subject to the Parking and Penthouse provisions of Section 23E.68.080.G.

2. In the Core area, up to three buildings with Green Pathway Additional Bonus Height of over 120 feet but not more than 180 feet plus up to 10 additional feet in height subject to the Parking and Penthouse provisions of Section 23E.68.080.G.

Allowed uses in such buildings include:

a. Two residential buildings with ground-level commercial uses.

b. One hotel building with conference facilities and accessory commercial uses.

3. Application process for buildings ~~over 75 feet in height~~ seeking Green Pathway Additional Bonus Height pursuant to Table 23E.68.070:

a. Any application for a building over 75 feet in height that was submitted to the City prior to November 4, 2014 and satisfied existing submittal requirements, as determined by the Zoning Officer, even if not initially submitted as a Green Pathway project pursuant to Chapter 23B.34, may be approved so long as the applicant modifies such application to elect the Green Pathway and the project complies with all applicable provisions of this Title. Such modified applications may be resubmitted and deemed complete pursuant to Section 23B.24.050 at any time on or after November 4, 2014 and shall not be considered new applications.

b. One (1) new aApplications for any of the five buildings seeking Green Pathway Additional Bonus Height ~~over 75 feet in height~~ may be submitted and deemed complete pursuant to Section 23B.24.050 during any one year, starting on the Fourth (4th) of May 2015 and restarting every Fourth (4th) of May thereafter. Once one (1) application for a building seeking such Green Pathway Additional Bonus Height has been submitted and deemed complete pursuant to Section 23B.24.050 during any one (1) such year, no additional applications seeking Green Pathway Additional Bonus Height may be submitted or deemed complete within the same year. ~~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.~~

~~B~~c. A project shall secure a position as one of the five allowed buildings with Green Pathway Additional Bonus Height ~~over 75 feet in height~~ following final Use Permit approval. After five such buildings have received final Use Permit approval, no new applications for buildings seeking Green Pathway Additional Bonus Height may be accepted and no additional Use Permits for Green Pathway Additional Bonus Height buildings may be approved.

d. ~~Such~~ Use Permits for buildings with Green Pathway Additional Bonus Height 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.

e~~c~~. 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.

C. 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 feet	0' minimum	0' minimum	5' minimum	5' minimum
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' minimum
Over 120 feet	15' minimum	15' minimum	15' minimum	15' minimum

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.

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.

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, and Fire Station 2. However, t~~ This provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.

4. 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.

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.

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

1. 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.

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

3. In lieu of providing the open space required by this Section on site, an applicant may pay an in-lieu fee at a rate of $30 per square foot of usable open space required, adjusted annually for inflation, 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~~E.

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

A. 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 for any use.

B. Except as provided at subsection C below, t~~T~~he 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

1. 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.

2. 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.

C. New construction, new uses and changes of use in the C-DMU Buffer Sub-Area, as designated in the Official Zoning Map, shall be subject to the R-4 parking standards in Table 23D.40.080.

D ~~C~~. 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 for dwelling units at one space per bedroom or studio. Such bicycle parking spaces shall be provided ~~and~~ in accordance with the requirements of Section 23E.28.070 and shall be offered and assigned to residents and employees working in the building first, at no cost. If ten (10) or more Bicycle parking spaces are not assigned to residents or employees working in the building, all unassigned spaces should be made available to the public.

~~D. 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.~~

E. Up to 70% of the applicable vehicle parking space requirements provided at Subsection B of this Section may be reduced or waived. All such reductions or waivers are subject to the findings required in Section 23E.28.140 and Payment of an in-lieu fee as adopted by the City.

F. Projects with vehicle parking space requirements of eleven (11) or more spaces pursuant to Subsection B of this Section shall provide all on-site disabled accessible parking spaces which would be required pursuant to Chapter 2 Section 208 of the Americans with Disability Act Guidelines based on the full vehicle parking requirement, whether or not such spaces are provided or have been reduced or waived. All disabled accessible parking spaces shall be provided in addition to, and not in lieu of, parking spaces required under Subsection B of this Section and Vehicle Sharing and Electrical Vehicle Charging Station spaces required pursuant to Subsection L of this Section.

G. If 100% of the vehicle parking, disabled accessible, Vehicle Sharing and Vehicle Charging Station spaces required by this Section are provided, without any reductions or waivers, plus at least ten (10) additional vehicle parking spaces are provided, the Board may approve a single Penthouse structure covering a maximum of 1/3 of the roof space or 4,500 square feet, whichever is less, with up to 10 additional feet in Height above the Green Pathway Bonus Height or Green Pathway Additional Bonus Height limits provided in Table 23E.68.070 and with front, rear and side setbacks of at least 10 Feet from the edge of the roof, subject to approval of a Use Permit and to the findings at Section 23E.68.090.I.

H ~~E~~. 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 exits 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.

I ~~F~~. 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.

J ~~G~~. 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.

K ~~H~~. 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.

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

2. 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.

~~L~~ I. ~~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 follow Table. If no parking spaces are provided pursuant to Section 23E.68.68.080.D, no vehicle sharing spaces shall be required.~~ The applicant shall build, in addition to unwaived vehicle parking spaces pursuant to Subsection B of this Section and required disabled accessible spaces pursuant to Subsection F of this Section, at least the minimum number of Vehicle Sharing Spaces and Electric Vehicle Charging Stations which would be required under a full build-out of all required vehicle parking, pursuant to the Table below, regardless of whether such vehicle parking is provided or has been reduced or waived. Unwaived vehicle parking spaces, Disabled Accessible spaces, Vehicle Sharing Spaces and Electric Vehicle Charging Station spaces required by this Section are cumulative requirements and no space may serve a dual purpose.

Number of Parking Spaces Required	Minimum Number of Vehicle Sharing Spaces	Minimum Number of Electric Vehicle Charging Stations
0 – 10	0	0
11 – 30	1	1
30 – 60	2	2
61 or more	3, plus one for every additional 360 spaces	3, plus one for every additional 30 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.

M ~~J~~. 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 parking requirements of this Section.~~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, Environmental Requirements and Community Benefits

~~A. 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 U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.~~

A. Construction of new buildings shall meet all of the following Green Building requirements:

1. Attain a LEED Gold rating of 65 points or its equivalent or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.

2. Attain an energy efficiency rating of 15 percent above the requirements of Title 24, or equivalent, as determined by the Zoning Officer.

3. Ensure at a minimum no new net water runoff and incorporate environmental practices such as depaving of spaces, permeable surfaces, rain catchment systems, and bio-filtration systems.

B. All projects must meet the following Environmental requirements:

1. Provide on-site recycling and composting facilities adequate to accommodate the reasonably estimated waste stream of the project

2. Pay a Transportation Services Fee, to be set by resolution of the City Council, to support alternative modes of travel and/or Transportation Demand Management (TDM) programs.

C. All projects shall make a contribution equivalent to $0.50 per square foot of new or additional Gross Floor Area into the City of Berkeley Revolving Loan Fund, providing capital for loans to businesses and entrepreneurs who seek to grow and retain or create jobs in Berkeley.

~~B. 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

A. 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.

B. A proposed use or structure must:

1. Be compatible with the purposes of the District; and

2. Be compatible with the surrounding uses and buildings.

C. 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:

1. The project meets the purposes of the Arts Overlay District as set forth in Section 23E.68.040; and
2. The location, size, type, appearance, and signage of the proposed use will:
   a. Animate and enhance the pedestrian experience on the street; and
   b. Be generally open to the public evenings and on weekends, whenever practicable.

D. 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.

~~E. 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.~~

~~F. In order to approve a Use Permit for modification of the setback 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.~~

E ~~G~~. In-Lieu Open Space.

1. In order to approve a Use Permit under Section 23E.68.070.E~~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.E~~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:

a. Will be located within the vicinity of the project and are consistent with the SOSIP; and

b. The improvements will be coordinated with other ongoing 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

c. The value of such improvements is equal to or greater than the amount of the applicable in-lieu fee.

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

F ~~H~~. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.~~D~~E, ~~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.

G ~~I~~. 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.

H. No Administrative Use Permit or Use Permit may be granted under Sections 23E.68.060.A or 23E.68.060.B unless the Zoning Officer or Board finds that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the District.

I. In order to approve a Use Permit under Section 23E.68.080.G, the Board must find that all three of the following requirements have been met and are included as Conditions of Approval:

1. 100% of the vehicle parking, disabled accessible, Vehicle Sharing and Electric Vehicle Charging Station spaces required by Section 23E.68.080 are included in the project, without any reductions or waivers, and will be built
2. At least 10 additional vehicle parking spaces are included in the project, and will be built
3. All 10 or more additional parking spaces provided in the project and all other spaces not leased or sold to residential or commercial occupants will be made available to the public.

Section 4. That Chapter 23E.98 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 23E.98

CIVIC CENTER DISTRICT OVERLAY

23E.98.010 Applicability of Regulations
23E.98.020 Purposes

23E.98.030 Uses Permitted
23E.98.040 Development Standards

23E.98.010 Applicability of Regulations
The regulations in this Chapter apply to the area coterminous with the Civic Center Historic District designated under Chapter 3.24 and are applicable to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)
2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office)

Section 23E.98.020 Purposes
The general purpose of the overlay district is to implement General Plan Policy LU-22 Civic Center: "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities", as well as Downtown Area Plan Policy LU-1.4: "Focus City government and civic activity in the Civic Center area, and recognize Downtown's central role in providing community services."

The specific purposes are to:

A. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District.
B. Allow a set of uses, which are civic in nature, and support active community use.
C. Promote uses, which combined or individually will maintain public access to the historic buildings and resources.
D. Promote appropriate uses which respect the Civic Center's historic significance in unifying the community and forming a link to Berkeley's past.
E. Promote the cultural and architectural heritage of the Civic Center.
F. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities.
G. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.

Section 23E.98.030 Uses Permitted
The following table identifies all permitted 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). All properties in the Civic Center District Overlay are restricted to only those uses listed below, regardless of uses permitted in the underlying zoning district.

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Libraries	UP(PH)	

Judicial Courts	AUP	
Museums	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Government Agencies and Institutions	AUP	
Public Schools/Educational Facilities	UP(PH)	
Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations	UP(PH)	
Live Performance Theatre	UP(PH)	
Public Market	UP (PH)	

Section 23E.98.040 Development Standards

A. All new buildings and additional Gross Floor Area within the Civic Center District Overlay shall be subject to a maximum building height of 50 feet.
B. All new buildings, additional Gross Floor Area, or changes of use shall be subject to the parking, set back requirements and other development standards of the underlying District, in addition to the other applicable requirements of this Title.

Section 5. That Berkeley Municipal Code Section 23F.04.010 is hereby amended so as to insert therein, in alphabetical order, the following three additional definitions:

Live Performance Theatre: An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.

Museum: A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.

Public Market: An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as 75% or more of retail space is devoted to the sale of General or Specialized food products and no more than 25% of retail space is devoted to one or more of the following Incidental Uses: owner operated and/or independent Carry Out Food and/or Quick Service Restaurants selling food from local and regional producers and sales of Retail Products from local and regional producers.

Section 6. Exempt from Environmental Review

Pursuant to Section 15378(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, this initiative is exempt from environmental review because the initiative is a "submittal [...] to a vote of the people [...] of a particular community that does not involve a public agency sponsored initiative", and is not classified as a project under CEQA.

Section 7. Findings for Compliance with Government Code Section 65863

WHEREAS, the proposed initiative ordinance reduces maximum allowable building heights in the Corridor and Buffer Sub Areas of the Commercial Downtown Mixed Use (C-DMU) District, from a maximum allowable building height of 60 feet in the Corridor Sub-Area and 50 feet in the Buffer Sub-Area; 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 the 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 changes are consistent with the General Plan Land Use designations of Medium Density Residential and Neighborhood Commercial. Following adoption of this initiative the General Plan shall be amended for consistency with this measure; and

WHEREAS, the 2009-2014 Regional Housing Needs Determination allocated a total of 2,431 units to the City of Berkeley, and within the planning period of the 2001 Housing Element, the City Approved 1,234 units; and

WHEREAS, the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land did include the Commercial Downtown Mixed Use District (C-DMU) in its analysis of land capable of supporting residential development; and

WHEREAS, numerous sites identified in the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land have not been developed, thus indicating additional residential unit capacity; and

WHEREAS, of those sites within the Commercial Downtown Mixed Use District (C-DMU) that were identified in the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land, the city estimated that under the development regulations proposed in the 2009 DAP, which permitted buildings at 120 feet and 180 feet similar to current regulations, that 479 units could be constructed during the 2009-2014 planning period, under the maximum allowable density permitted; and

WHEREAS, the 2010 Housing Element estimates potential residential capacity for the Housing Element planning period to be roughly 3,320 units, which is adequate to address the 2007-2014 Regional Housing Needs Assessment of 2,431 units and the 479 units in the Downtown Plan area which could be constructed under the maximum allowable density proposed in the 2009 DAP; and

WHEREAS, the 2010 Housing Element list of opportunity sites may include sites within the area in which the maximum residential density is proposed to be reduced, but there is adequate capacity throughout the city and the proposed changes with not limit the City's ability to meet its share of the regional housing need.

Section 8. Amendment

Following adoption of this initiative by the voters, no part of Chapter 23B.34 (Green Pathway), nor any of the Development Standards in Section 23E.68.070, Parking Requirements in Section 23E.68.080, Green Building Requirements in Section 23E.68.085, nor any part of Chapter 23E.98 (Civic Center Overlay) may be amended

without being submitted to the voters and approved by a vote of the people. All other provisions, unless modified by voter approval, cannot be amended by the City Council until 5 years after approval of this initiative.

Section 9: Amending Downtown Area Plan and General Plan for Consistency with this Initiative Ordinance

Immediately following adoption of this initiative by the voters, the City Manager shall develop amendments to the Downtown Area Plan and General Plan for consistency with this initiative. Pursuant to Berkeley Municipal Code Section 22.04.020, such amendments shall be submitted to the Planning Commission who shall hold a public hearing prior to making a recommendation to the City Council on adoption of the amendments.

Section 10: Severability

If any part or provision of this initiative ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, hereby certify that:

An Initiative Petition entitled: **"INITIATIVE ORDINANCE AMENDING DOWNTOWN ZONING PROVISIONS AND CREATING CIVIC CENTER HISTORIC DISTRICT OVERLAY ZONE"** was filed with the Berkeley City Clerk on May 20, 2014 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on May 22, 2014; and

The petition contained **3,717** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by **2,638** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **123%** based on a random sample of the signatures; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under the Berkeley Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of June, 2014.

Mark Numainville
City Clerk
City of Berkeley