



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: October 11, 2022

Item Number: 20

Item Description: Referral Response: Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades

Submitted by: Jordan Klein, Director, Planning and Development Department

The published staff report and ordinance inadvertently contained formatting referencing the Berkeley Municipal Code which, once published as a pdf document in the Council agenda packet, displayed as reference error text.

The attached versions of the staff report and ordinance have removed those reference errors.



Office of the City Manager

PUBLIC HEARING
October 11, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: Referral Response: Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of Zoning Ordinance amendments to provide consistency for the incidental use of Amusement Devices and regulate Amusement Device Arcades as Commercial Recreation Centers.

SUMMARY

This report presents Zoning Ordinance amendments recommended to improve consistency between the Title 23 Zoning definitions of Amusement Devices, Amusement Device Arcades (Arcades) and Incidental Use¹, and apply the permit structure for Commercial Recreation Centers to Amusement Device Arcades.

FISCAL IMPACTS OF RECOMMENDATION

Zoning Ordinance amendments will have minimal financial impacts on the City. Permit fees compensate the City for review expenses. In addition, zoning changes are expected to reduce barriers and costs to those interested in operating Amusement Devices, which could have an economic benefit to the City.

¹ **BMC Chapter 23.502.020 Defined Terms:**

Amusement Device: Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

Amusement Device Arcade: A type of commercial recreation center which contains six or more amusement devices. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.

Use, Incidental: A use of a lot and/or building that is secondary to the principal permitted use, but that by nature could be independent. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.

CURRENT SITUATION AND ITS EFFECTS

Commercial Recreation Centers (CRC) are non-theater establishments where recreation facilities are offered or amusement devices are provided as a principal commercial activity. In 2018, City Council adopted a tiered permitting structure for CRCs. **Tables 1 and 2** show the distinct thresholds established per General Plan designation, which coincide with various zoning districts according to purpose and intensity.

Table 1: Avenue Commercial Permit Threshold for CRCs

Size Threshold (square feet)	Permit Required ²
Under 5,000	ZC
5,000 - 10,000	AUP
Over 10,000	UP(PH)

*Outdoor uses require UP(PH)

Table 2: Neighborhood Commercial Permit Threshold for CRCs

Size Threshold (square feet)	Permit Required
Under 3,000	AUP
Over 3,000	UP(PH)

*Outdoor uses require UP(PH)

Arcades are defined by the BMC as a type of CRC, yet they are regulated separately; in some districts they are prohibited, and in others they require a Use Permit regardless of the proposed establishment's square footage. The proposed Zoning Ordinance amendments are presented in this report and fall under two categories:

1. Regulate Arcades as Commercial Recreation Centers
2. Modify Regulations Allowing Amusement Devices Incidental to a Permitted Use

To read more about each recommendation presented below, please see the Planning Commission Report (Attachments 2 and 3).

1. Regulate Arcades as Commercial Recreation Centers

Proposed amendments outlined in this category will allow Arcades to be regulated as Commercial Recreation Centers (CRCs).

² Zoning Certificate (ZC) | Administrative Use Permit (AUP) | Use Permit, Public Hearing (UP(PH))

Rationale: The CRC permitting structure adopted by City Council in December 2018 as part of the Small Business Support Package is clear, easy to understand and is appropriate for Arcades, and so should be used for Arcades as well. Arcades are currently defined as a type of CRC, but are listed separately in Use Tables and have different permit requirements. Regulating Arcades as CRCs will reduce redundancy and discrepancies in the BMC.

- Modify Arcades in the Allowed Use Table - Table 23.204-1 to refer to the CRC permitting structure to be regulated as CRC use. **Figure 1** shows the modification of Amusement Arcade in the allowed use table for Commercial Zoning Districts. **Figure 2** shows the current CRC regulations that Arcades will be folded into under each District.

Figure 1. Summary of Proposed Amendments to regulate Arcades as CRCs

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses													
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	23.302.070.A	
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	23.302.070.B	
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	-	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2; 23.310	
Commercial Recreation Center	See 23.204.040.A												

Figure 2. Existing CRC Regulations

Districts	CRC Size Thresholds (sq. ft.)	Permit Required
Neighborhood Commercial		
C-N	Under 3,000 Over 3,000	AUP UP(PH)
C-E		
C-NS		
C-SA		
C-SO		
C-AC		

Avenue Commercial

C-C	Under 5,000 5,000-10,000 Over 10,000	ZC AUP UP(PH)
C-U		
C-T		
C-W		
C-DMU		

Manufacturing District

M	Prohibited
MM	Prohibited
MU-LI	AUP
MU-R	Prohibited

- Remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school (as seen below).

23.302.070 B. Amusement Arcades

1. Distances from Schools. An Amusement Device Arcade may not be established within a radius of six hundred (600) feet of any primary or secondary school.)

Rationale: This provision was established in the 1990s to prevent Amusement Device Arcades from establishing too close to primary and secondary schools. However, the advancement of technology has brought gaming opportunities to people’s households and fingertips through computers, gaming consoles, mobile phones, and other portable devices, and in that context the provision is no longer relevant.

2. Modify Regulations Allowing Amusement Devices Incidental to a Permitted Use

Amendments will allow incidental use of Amusement Devices in up to 25 percent of the net floor area of the primary use with a zoning certificate.

Rationale: Arcades are currently defined as having six or more Amusement Devices. Incidental Use is defined as not exceeding 25 percent of the primary use. Current regulations allow up to three Amusement Devices incidental to an established use with either an AUP or a UP(PH), depending on the district. Proposed amendments close the gap between Arcades, the incidental use of Amusement Devices, and the definition of incidental use by changing the definition of Amusement Devices incidental to an establish use to not exceeding 25 percent of the primary use. Amendments also reduce permit levels for incidental uses to align

with CRCs and to maintain consistency across BMC regulations. Proposed amendments are listed below and summarized by **Figure 3**.

- Change the maximum number of Amusement Devices allowed as an incidental use from three devices to up to 25 percent of total net floor area of the primary use.
- Amend the definition of Arcade from CRC containing six or more Amusement Devices to CRC with Amusement Devices in more than 25 percent of net floor area of the primary use.
- Reduce the level of discretion for Amusement Devices as an incidental use from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC) for Avenue Commercial and Manufacturing Districts.
- Remove permitting discretion for Amusement Devices as an incidental use from a Use Permit with a Public Hearing (UP(PH)) to a Zoning Certificate (ZC) for Neighborhood Commercial Districts.

Figure 3. Summary of Current and Proposed Regulations for Amusement Devices Incidental to and a Primary Use

	Current	Proposed
Districts	Up to 3 Amusement Devices allowed as an incidental Use	Up to 25 Percent of Primary Use Amusement Devices allowed as an incidental Use
Neighborhood Commercial		
C-N	UP(PH)	<u>ZC</u>
C-E	UP(PH)	<u>ZC</u>
C-NS	UP(PH)	<u>ZC</u>
C-SA	UP(PH)	<u>ZC</u>
C-SO	UP(PH)	<u>ZC</u>
Avenue Commercial		
C-1	AUP	<u>ZC</u>
C-T	AUP	<u>ZC</u>
C-W	AUP	<u>ZC</u>
C-DMU	AUP	<u>ZC</u>
Manufacturing Districts		
M	Prohibited	Prohibited
MM	Prohibited	Prohibited

MU-LI	AUP	<u>ZC</u>
MU-R*	AUP	<u>ZC</u>

* MU-R Allows Amusement Devices as incidental use only and prohibits arcades

BACKGROUND

The Berkeley Municipal Code (BMC) currently prohibits Arcades in the Elmwood Commercial (C-E) district. On June 25, 2019, the City Council adopted a referral authored by Councilmember Droste, seeking consideration of levels of discretion for Arcades in the C-E District, recommending that they be re-examined and relaxed (Attachment 4).

On October 7, 2020, Staff shared research and findings associated with the business support referral with the Planning Commission. The staff analysis of this referral identified issues with the existing permit requirements for Arcades throughout commercial and manufacturing districts in Berkeley. The Commission asked staff to proposed amendments based on the recommendations discussed. On February 3, 2021, Staff returned to the Planning Commission and presented Zoning Ordinance amendments concerning the regulation of Amusement Device Arcades and Amusement Devices.

Commissioner Wiblin motioned to recommend that City Council adopt staff's recommendation, and Commissioner Krpata seconded the motion. The Planning Commission unanimously voted to recommend that City Council adopt staff's recommendation (M/S: Wiblin/Krpata; Ayes: Commissioners Beach, Ghosh, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin; Noes: None; Abstain: None; Absent: None). Amendments presented here reflect a more comprehensive response to Council's referral.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are currently no Arcade businesses in the City of Berkeley. The proposed ordinance will reduce the zoning barriers for operators to locate within the City and can thereby reduce the travel distance and vehicle miles traveled of residents and community members to access Arcades.

RATIONALE FOR RECOMMENDATION

As retail continues to shift towards online platforms, business models are evolving to provide activity-based experiences that attract customers. Existing thresholds for CRCs were adopted by City Council as recently as 2019 to provide a clear permitting structure for such businesses. CRC regulations also provide the flexibility requested by Council's referral while also providing opportunities for the surrounding community to weigh in during the permitting process. Extending the same clear permitting path to Arcades, by defining them as CRCs, allowing incidental amusement devices and improving consistency throughout the BMC, improves opportunities for businesses to adapt and provide activity-based experiences.

ALTERNATIVE ACTIONS CONSIDERED

Council could take no action, in which case the Zoning Ordinance would retain existing regulations for Amusement Devices and Arcades.

CONTACT PERSON

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Steven Buckley, Land Use Planning Manager, Land Use Planning Division, (510) 981-7411

Attachments:

- 1: Draft Ordinance
- 2: Planning Commission Staff Report (without attachments) – Oct. 7, 2020
- 3: Planning Commission Meeting Minutes – Oct. 7, 2020
- 4: Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19)
- 5: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.302.070, CHAPTER 23.204.020, CHAPTER 23.206.020 AND CHAPTER 23.502.020 TO MODIFY THE DEFINITION OF AMUSEMENT DEVICE ARCADES AND MODIFY PERMIT REQUIREMENTS FOR AMUSEMENT ARCADES IN THE COMMERCIAL ZONING DISTRICT AND WHEN INCIDENTAL TO A PERMITTED USE.

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

Section 1. That Berkeley Municipal Code Chapter 23.302.070 B. Amusement Devices Arcade is amended as follows:

Chapter 23.302.070 Use-Specific Regulations

B. Amusement Devices Arcade.

- ~~1. *Distance from Schools.* An Amusement device arcade may not be established within a radius of 600 feet of a primary or secondary school.~~
- ~~2. *Incidental Use.* Table 23.302-5 shows permits required and maximum number of amusement devices allowed as an incidental use in the non-residential districts. Amusement Devices up to 25 percent of total net floor area of the primary use are allowed as an incidental use with a Zoning Certificate. Amusement Devices are prohibited in the M Manufacturing District and MM Mixed Manufacturing District.~~

~~**Table 23.302-5. PERMIT REQUIREMENTS FOR AMUSTMENT DEVICES AS INDICIDENTIAL USES**~~

DISTRICT	PERMIT REQUIRED	MAXIMUM NUMBER
C-C, C-U, C-N, C-T, C-W	AUP	3
C-E, C-NS, C-SA, C-SO	UP(PH)	3
MU-LI	AUP	3
MU-R AUP3M,MM	Not Permitted	

Section 2. The Berkeley Municipal Code Chapter 23.204.020 Allowed Land Uses is amended as follows:

Chapter 23.204.020 Allowed Land Uses

A. *Allowed Land Use Table.* Table 23.204-1: Allowed Uses in the Commercial Districts identifies allowed land uses and required permits in the Commercial Districts. All land uses are defined in Chapter 23.502 (Glossary). Permit requirements are described in Chapter 23.406 (Specific Permit Requirements). Permits required for land uses shown in Table 23.204-1 apply to both:

1. The initial establishment of a land use in a new building; and
2. The change of use in an existing building or portion of a building.

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses													
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	23.302.070.A	
See 23.204.040.A													
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)*	23.302.070.B	
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	--	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2; 23.310	
Commercial Recreation Center	See 23.204.040.A												

Section 3. The Berkeley Municipal Code Chapter 23.206.020 Allowed Land Uses and Permit Requirements is amended as follows:

Chapter 23.206.020 Allowed Land Uses

A. *Allowed Land Use Table.* Table 23.206-1: Allowed Uses in the Manufacturing Districts identifies allowed land uses and required permits in the Manufacturing Districts. All land uses are defined in Chapter 23.502 (Glossary). Permit requirements are described in Chapter 23.406 (Specific Permit Requirements). Permits required for land uses shown in Table 23.206-1 apply to both:

1. The initial establishment of a land use in a new building; and
2. The change of use in an existing building or portion of a building.

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	MANUFACTURING DISTRICTS				USE-SPECIFIC REGULATIONS
	M	MM	MU-LI	MU-R	
Incidental Uses					
Amusement Device Arcade	NP	NP	ZC AUP	ZC-AUP	23.302.070.B

Section 4. The Berkeley Municipal Code Chapter 23.502 Glossary is amended as follows:

Chapter 23.502.020 Defined Terms

A. "A" Terms...

17. *Amusement Device Arcade.* A type of commercial recreation center which contains ~~six or more~~ amusement devices in more than 25 percent of the net floor area of the primary use. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.