



Planning and Development Department
Land Use Planning Division

STAFF REPORT

June 7, 2023

TO: Members of the Planning Commission

FROM: Kieron Slaughter, Chief Strategist, Economic Innovation, Office of
Economic Development
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SUBJECT: Zoning Amendments to Support Berkeley Businesses

RECOMMENDATION

Staff recommend the Planning Commission receive a presentation on proposed zoning amendments to support Berkeley businesses, take public comment, provide feedback and direction to staff, and convene a Subcommittee to provide detailed review to staff to draft zoning ordinance amendments for a Public Hearing at Planning Commission with recommendation to the City Council.

SUMMARY

In response to City Council referrals, City staff from the Office of Economic Development (OED) and the Land Use Planning Division (LUP) are proposing zoning revisions targeted at, but not limited to, supporting small businesses in commercial, manufacturing, and Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU)¹. Small businesses are defined as having 50 or fewer employees. This report includes seven responses to Council referrals concerning group instruction, alcohol sales and service, hours of operation, change of use, and ATMs. The report also includes seven related staff recommendations for amendments to the BMC that regulate business and professional offices, art and craft studios, pet stores, live entertainment, food service, and drug paraphernalia.

The seven referral actions include:

¹ City of Berkeley GIS Portal Zoning Map:
<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Planning%20and%20Building>

1. Permit **Group Class Instruction** with a Zoning Certificate (ZC) in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), North Shattuck Commercial (C-NS) and Solano Avenue Commercial (C-SO) zoning districts, and revise the definitions of a number of group-oriented activity uses;
2. Permit the sale of **Distilled Spirits incidental to food services** with an Administrative Use Permit (AUP) in Commercial zoning districts and the Mixed Use-Light Industrial (MU-LI) and Mixed Use-Residential (MU-R) zoning districts;
3. Permit **stand-alone Beer and Wine Sales and Service** (at stores and bars) with an AUP in all Commercial zoning districts;
4. Revise the Special Use Standards for **Alcoholic Beverage Sales**;
5. Extend allowed **hours of operation** in Commercial zoning districts;
6. Remove permit requirements to **change of use** in Commercial zoning districts; and
7. Make no changes related to **Automatic Teller Machines (ATMs)** in Commercial zoning districts.

OED staff also puts forward the following seven additional zoning ordinance revisions for Planning Commission consideration:

8. Permit **Office, Business and Professional uses, and Art/Craft Studios** with a ZC in commercial zoning districts, and permit **Pet Stores** with an AUP in commercial zoning districts;
9. Permit unamplified **Live Entertainment** with a ZC and amplified Live Entertainment with an AUP in commercial zoning districts and in the MU-LI and MU-R zoning districts;
10. Permit distilled **alcoholic beverage service without seated food service** in the Telegraph Avenue Commercial (C-T), C-NS and C-SO zoning districts;
11. Permit **Food Service Establishments** of 3,000 square feet or less with a ZC, and establishments with more than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts; and permit the rental of space in Food Service Establishments that include incidental alcohol sales to third parties;
12. Remove the **cap on the number of Food Service Establishments** in the C-E zoning district;
13. Permit incidental **Food Service Establishments** under 20,000 square feet in manufacturing districts to be **indoors and outdoors**, and remove the specification that food or beverage be limited to "immediate consumption" in the MM zoning district; and
14. Permit **drug paraphernalia sales** as an allowed use in the C-T zoning district.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased business activity. In addition, the proposed amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over many decades to reflect Berkeley's changing values and the changing landscape of property development and land use. Its requirements are intended to guide the city's growth while providing opportunities for feedback from residents, business owners, and commercial district and neighborhood associations.

OED staff have observed that it is particularly difficult for small, independently-owned businesses to navigate the permit review process and the associated timelines and expense.

In order to better accommodate today's small, independent enterprises, OED staff recommend amendments to provide a simpler, less-expensive, and speedier process for businesses in their establishment or expansion phases. These changes further the City of Berkeley's Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily-accessible service and information to the community," while honoring the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND

In response to Council's *Small Business Support Package* of 2017 and the subsequent referral response, *Zoning Amendments to Support Small Businesses* of 2018, OED staff gathered input from small business owners regarding their experiences and challenges in Berkeley. The initial outreach conducted between 2017 and 2019 consisted of surveys and interviews with Berkeley's small businesses and three small business forums.²

On October 15, 2019, City Council referred to the Planning Commission a set of nine policy considerations “to streamline the zoning review process for new or expanding

² OED's Small Business Forums included: 2017 (Gaumenkitzel, 2121 San Pablo Ave), 2018 (Raleigh's, 2438 Telegraph Ave) and 2019 (Kirin, 1767 Solano Ave).

small businesses,” to support Berkeley businesses and bolster Berkeley’s commercial districts (**Attachment 1**). Planning Commission discussed an initial referral response to this item in July 2020 (**Attachment 2**). Two of the nine items, related to the regulation of arcades and the review process for business signs, were adopted by the City Council in 2022.³

The first section of this report includes proposed zoning revisions for the remaining referral items, summarized in Table 1. One referral item related to ATMs (#7) is not proposed to be amended at this time.

Table 1 Referral Actions and Zoning Amendment Proposals

Referral Action	Potential BMC Section(s)
<p>1. Group Class Instruction. Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Attachment 1, referral dated 10/15/2019)</p> <p>Revise definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”</p>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p> <p>23.502.20 Glossary (Defined Terms)</p>
<p>2. Incidental Distilled Spirits. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts. (Attachment 1, referral dated 10/15/2019, and Attachment 3, referral dated 12/4/2018)</p>	<p>23.310.030. Alcoholic Beverage Service When Incidental to Food Service</p> <p>Table 23.310-1. Permits Required for Alcoholic Beverage Service</p>
<p>3. Stand-Alone Beer and Wine. Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Attachment 1, dated 10/15/2019 and Attachment 3, referral dated 12/4/2018)</p>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p>

³ *Referral Response: Amendments to the Zoning Ordinance to Clarify and Streamline the Permit Process for Amusement Device Arcades*, adopted by Berkeley City Council, Item 20, October 11, 2022 and *Referral Response: Amendments to the Sign Ordinance to Clarify Procedures and to Establish a Coordinated Sign Design Program, and Establish a New Fee for Coordinated Sign Design Programs*, adopted by Berkeley City Council, Item 11, November 29, 2022.

Referral Action	Potential BMC Section(s)
4. Alcoholic Beverage Sales Standards. Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C). (Attachment 1, referral dated 10/15/2019)	23.310.030. Alcoholic Beverage Service When Incidental to Food Service
5. Hours of Operation. Modify hours and days of operations in commercial districts. (Attachment 1, referral dated 10/15/2019). Establish that an AUP, not a Permit Modification, is required to extend hours to match this change.	23.302.020(B). General Use Regulations—Hours of Operation 23.404.070 Permit Modifications
6. Change of Use. Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	23.204.020. Allowed Land Uses (Commercial Districts) Table 23.204-1. Allowed Uses in Commercial Districts 23.204.040. Use-Specific Permit Requirements
7. ATMs. Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Attachment 1, referral dated 10/15/2019)	No changes proposed.

BMC Section 23.402.020 (Review and Decision-Making Authority) summarizes the procedures when processing permit applications. The bullet points below explain the three levels of discretion applied to permitted uses in BMC 23.406 (Specific Permit Requirements).

- A **Zoning Certificate (ZC)** is a ministerial planning staff approval to confirm that a structure or land use complies with the Zoning Ordinance. A ZC is approved by staff who report to the Zoning Officer based on the objective criteria established in the zoning code and there is no opportunity to appeal.⁴ A ZC entitles the applicant to obtain a business license and/or building permit to begin operation.

⁴ A Zoning Certificate (ZC) is typically issued in person at the permit service center or within two weeks if requested online. A ZC costs between \$230 and \$460, depending on ZC type.

- An **Administrative Use Permit (AUP)** is a discretionary permit approved by the Zoning Officer to ensure that a proposed project or use will not adversely impact neighboring properties or the general public. Written notice of the Zoning Officer's initial decision on an AUP is provided to the immediate neighbors and can be appealed to the Zoning Adjustments Board (ZAB), or, if the AUP is initially referred to the ZAB for a decision by the Zoning Officer, can be appealed to the City Council. Appeals to the ZAB and/or City Council are conducted as public hearings. The Zoning Officer, ZAB or City Council can add conditions of approval to AUPs.⁵
- A **Use Permit (UP)** is a discretionary permit approved by the ZAB, at a publicly-noticed public hearing to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public. This level of discretion is notated as *UP(PH)* or *Use Permit (Public Hearing)* in the BMC. The ZAB's initial approval of a UP can be appealed to the City Council. Appeals to the City Council are publicly-noticed public hearings. The ZAB or City Council can add conditions of approval to UPs.⁶

Additional Zoning Amendments to Assist Berkeley Businesses

In the course of conducting outreach for the proposed amendments listed in Table 1, OED staff received additional feedback outside of the scope of the initial referral actions. Between the initial referral in 2019 and present (Spring 2023), OED staff has continued to conduct research and outreach to assist local businesses. In addition to research, these efforts have included: consulting with business services staff at nonprofit organizations and other municipalities; meeting with small business owners, operators and business district staff in Berkeley; analyzing other municipalities' business services and policies; analyzing Berkeley-specific case studies and permit records; and conducting additional direct services, such as the Small Business Retention Program.⁷

As a result, OED staff propose seven additional related zoning amendments for consideration by the Planning Commission. OED staff have met with the Berkeley Police Department's Community Services Bureau as well as code enforcement staff

⁵ An AUP can take between 2 and 8 months to process, and typically costs between \$2,166 and \$6,398. For additional information, see <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/administrative-use-permit>.

⁶ Use Permits can take between 6 and 24 months to process, and typically cost between \$4,282 and \$7,432. For additional information, see: <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/use-permit>.

⁷ Project Equity, Small Business Retention Project, (2019-present), see: <https://project-equity.org/communities/small-business-closure-crisis/berkeley-california/>

from the Zoning, Neighborhood Services and Environmental Health Divisions to gather input and identify process and implementation improvements, particularly with respect to after-hours code enforcement.

The additional seven proposed amendments to support Berkeley’s small businesses are summarized below in Table 2.

Table 2 Additional Zoning Amendment Proposals

Additional Actions	Potential BMC Section(s)
<p>8. Office, Business and Professional; Art/Craft Studio; Pet Stores.</p> <ul style="list-style-type: none"> • Allow Office, Business and Professional uses with a ZC in the C-N, C-E, C-NS, C-T and C-SO zoning districts; • Allow Art/Craft Studios with a ZC in all commercial zoning districts; and • Permit Pet Stores with an AUP in the Corridor Commercial (C-C), University Commercial (C-U), C-N, C-E, C-NS, South Area Commercial (C-SA), C-T, C-SO, Downtown Mixed-Use (C-DMU) and Adeline Corridor Commercial (C-AC) zoning districts. 	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p>
<p>9. Live Entertainment. Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, West Berkeley Commercial (C-W), C-E, MU-LI and MU-R zoning districts.</p>	<p>23.302.020(D) General Use Requirements—Live Entertainment—Permits Required</p>
<p>10. Seated Food Service Requirement. Allow distilled alcoholic beverage service to accompany seated food service in the C-T, C-NS, and the C-SO zoning districts.</p>	<p>23.310.030(B) Alcoholic Beverage Service When Incidental to Food Service—Use Limitations</p>
<p>11. Food Service Establishments 3,000 sq. ft or less. Allow Food Service Establishments 3,000 square feet or less with a ZC, and permit food establishments greater than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts, as long as alcohol services is not included.</p> <p>Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.</p>	<p>23.302.070(E). Use-Specific Regulations—Food Service Establishments</p> <p>23.310.030. Alcoholic Beverage Service When Incidental to Food Service</p>

Additional Actions	Potential BMC Section(s)
12. Food Service Establishment Quota. Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.	23.204.080 C-E Elmwood Commercial District
13. Incidental Food Service Establishment Requirements. Allow incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.	23.302.070(E) Use-Specific Regulations—Food Service Establishments Table 23.302.070--80 Permit Requirements for Food Service Establishments in Manufacturing Districts
14. Drug Paraphernalia in C-T District. Allow retail sales of drug paraphernalia in the C-T zoning district.	23.204.110(B)(3) C-T Telegraph Avenue Commercial District

DISCUSSION

The proposed Zoning amendments are intended to:

1. Reduce permit review thresholds for establishing permitted uses;
2. Increase consistency of permitted uses across neighborhood commercial zoning districts and across larger corridor zoning districts;
3. Maintain public noticing procedures, ability to condition approvals, and provide pathways to appeal a discretionary permit.

Proposed Zoning Amendments in Response to Referred Actions

Staff have identified the following recommended Zoning amendments in response to referrals by City Council.

1. *Group Class Instruction.*

Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. The proposed zoning definition amendments are summarized in Table 3 below. Currently, most Commercial zoning districts require an AUP for group class instruction. Based on outreach by OED staff, the existing AUP process can be both expensive and cumbersome for applicants to establish these uses.

Recent business models focus on creating activity or experience-based enterprises for patrons alongside traditional retail sales (e.g., painting or art classes accompanying the sales of paint and art supplies, or pattern and fabric sales connected with sewing classes).

The proposed amendments would allow Group Class Instruction, Art Classes/Studios, Dance/ Martial Arts Studios, and Gym/Health Club/Fitness Studios with a ZC in all Commercial zoning districts, including the C-N, C-E, C-NS and C-SO zoning districts where they currently require an AUP, or, in the case of Gym/Health Club/Fitness Studios, where permits vary based on zoning district and business size. Group instruction uses that involve amplified sound would still be required to obtain the necessary permit (i.e., AUP) and follow the existing performance standards related to noise. The reduction in permit threshold would make it easier for business operators to offer activity-based and/or group instruction experiences in Berkeley.

Revise Definitions Related to Group Class Instruction. There are currently three definitions that share operational characteristics and permit requirements: “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”

Table 3: Existing and Proposed Group Class Instruction & Related Definitions

Existing Definition	Proposed Definition
<p>Dance / Exercise / Martial Arts / Music Studio. An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.</p>	<p>Dance / Martial Arts Studio. An establishment in which customers assemble for dancing, self-defense training, or other movement drills for learning, rehearsal or non-audience performances.</p>
<p>Group Class Instruction. An establishment that offers specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.</p>	<p>Group Class Instruction. An establishment that offers specialized programs in personal growth and development. Includes music and choral instruction, drama schools, art schools, tutoring centers, and instruction in other cultural and academic pursuits.</p>
<p>Gyms and Health Clubs. An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.</p>	<p>Gym / Health Club / Fitness Studio. An indoor facility where exercise equipment, group classes and other activities related to personal health and fitness are available to customers or members. Excludes parks/playgrounds.</p>

Exercise and aerobics are proposed to be removed from “Dance Studios” because they are captured in the definition of “Gym / Health Club / Fitness Studio.” “Music Studio” is proposed to be removed from the definition because the use is captured in the existing definition of “Media Production.” Music Instruction is proposed to be included under

“Group Class Instruction.”⁸ Note that the definition and permit requirements for Commercial Recreation Center remain unchanged, which permit activities and uses that include (but aren’t limited to) indoor rock climbing, bowling alleys, bingo parlors, skating rinks, billiard or pool halls, miniature golf courses and axe throwing.

- **Combining Group Class Instruction and Related Definitions.** An alternative to refining the three definitions would be to combine all of them into a single Group Class Instruction/Gym/Fitness Studio definition. Many of the businesses that would be covered under only one the three definitions share traits that would make them similar from a land use impact perspective: regular visits by members or customers, the presence of exercise or activity-related equipment, and the offering of organized classes.

2. *Incidental Distilled Spirits.*

Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts, and with a UP in the R-BMU zoning district. Currently, an operator of a Food Service Establishment must obtain a Use Permit to serve Distilled Spirits that are incidental to food service, which is a process separate from, and in addition to, the State of California Division of Alcohol Beverage Control (ABC) review process. The proposed amendments would permit incidental sale and service of distilled alcoholic beverages in Berkeley with an AUP. The proposed changes are included in Table 4, below and would also include an amendment to BMC Section 23.310.030(C) – Incidental Beer and Wine Service Standards to condition Food Service Establishments applying to expand alcoholic beverage service.

Table 4: Beer & Wine and Distilled Spirits Incidental to Food Service – Proposed Amendments

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
All Commercial Zoning Districts, except C-AG and the R-BMU District	ZC	UP(PH) <u>AUP</u>

⁸ Note: This would be separate from a home occupation use in a residential district that includes small group lessons as an incidental use, such as private piano lessons.

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
<u>R-BMU</u>	<u>ZC</u>	<u>UP(PH)</u>
MU-LI, MU-R	<u>UP(PH) AUP</u>	<u>UP(PH) AUP</u>

3. *Stand-Alone Beer and Wine.*

Permit stand-alone Beer and Wine Sales and Service with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts. Currently, stand-alone Beer and Wine Sales and Service uses (e.g., tap rooms, wine bars, and tasting rooms) are permitted in the C-C, C-U, C-SA, C-T, C-DMU, C-W, and C-AC zoning districts with a Use Permit, which is a process separate from, and in addition to, the State of California’s Alcoholic Beverage Control (ABC) review process. The proposed amendments would permit stand-alone sale and service of beer and wine with an AUP.

4. *Alcoholic Beverage Sales and Service Standards.*

Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C) to align with the proposed Zoning amendments. The proposed amendments include revisions to the Special Use Standards for Alcoholic Beverage Sales in BMC 23.319.030(C).⁹ These changes include revised findings for public convenience and necessity that provide objective standards for staff to reference when evaluating permit applications and/or preparing findings for a proposed permit involving alcoholic beverage sales or service.

Revise Alcoholic Beverage Sales General Requirements, Excluding Incidental Beer and Wine Service. BMC Section 23.310.020, Alcoholic Beverage General Requirements Excluding Beer and Wine Service (i.e. distilled spirits), applies to applications that are starting or increasing alcoholic beverage sales (except for beer and wine service that is incidental to food service). The proposed revisions would implement the following changes:

- Currently, a Use Permit is required to begin or increase alcoholic beverage sales or service. The proposed revisions would permit service of distilled spirits incidental to food service with an AUP.

⁹ Special Use Standards for Alcoholic Beverage Sales first established in 1999 and revised in 2008, 2009, 2010, 2011, 2014, and 2019.

- The proposed revisions would amend the findings of undue concentration of alcoholic beverage sales and service uses to be consistent with State of California definitions found in Business and Professions Code Section 23958.4¹⁰ and in ABC regulations.
- The proposed revisions would amend the Findings of Convenience and Necessity to include economic development benefits to the surrounding area, and to require that only one, not all, of the listed findings are required for permit issuance.
- The proposed revisions would remove existing requirements that the Berkeley Police Department (BPD) review proposed establishments to determine whether they would be expected to add crime to the area or whether an applicant's previous alcohol-related violations at another location would indicate a high likelihood of further violations. These findings are difficult to make as there are no objective standards to evaluate the potential of a business to negatively impact public safety in the future, for BPD to forecast crime at a particular location, or to attribute any predicted increase in crime to the operation of a business that does not yet exist. BPD will instead be notified of all approved alcohol-related permits along with their conditions of approval.

Revise Alcoholic Beverage Sales General Requirements, Alcoholic Beverage Service When Incidental to Food Service. BMC Section 23.319.030(C) includes standards that apply to beer and wine service that are incidental to food service in commercial zoning districts. The proposed revisions would implement the following changes for beer and wine service that is incidental to food service:

- The proposed revisions would allow beer and wine to be served in its original bottle or can, or in a container.
- The proposed revisions would allow a lounge or bar area to be established for the sole purpose of alcoholic beverage sales and consumption.
- The proposed revisions would empower the Zoning Officer to review and approve changes to hours of operation that have been established through conditions of approval with an AUP.
- The proposed revisions would remove the common permit condition that prohibits the premises to be rented by a third party.

¹⁰ Business and Professions 23958.4.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC

- The proposed revisions would allow advertising of alcoholic beverages and allow alcoholic beverage sales and service equipment to be visible from the public right-of-way, subject to standards in BMC 20.67 (Alcohol Product Advertising).

5. *Hours of Operation.*

Modify hours and days of operation in commercial zoning districts. Currently, the permitted days and hours of operation vary among commercial zoning districts, and do not account for holidays and other unique cultural and civic events that may occur on a weekday. Currently, in order for a business to extend hours of operation, a UP is required in most commercial zoning districts. To standardize the permitted hours and days of operations across districts, the proposed amendments include the changes to permitted hours of operation as shown in Table 5. Controls related to both noise and alcohol sales would remain in effect with the adoption of the changes articulated in Table 5.¹¹ While 24 hour a day operation would be allowed in the C-DMU and C-T zoning districts for commercial uses, no alcohol service use would be permitted to continue past 2:00 a.m.¹²

Table 5 Hours of Operation – Proposed Amendments

District	Allowed Hours of Operation	Permit Required to Extend Hours
C-C, C-U, <u>C-NS, C-AC</u>	<u>7:00 a.m.—12:00 midnight</u> <u>6:00 a.m.—2:00 a.m.</u>	AUP
C-N, C-E, <u>C-NS</u> , C-SO, C-W outside nodes, <u>C-SA</u>	<u>7:00 a.m.—11:00 p.m.</u> <u>6:00 a.m.--12:00 midnight</u>	<u>UP AUP</u>
C-W nodes	<u>6:00 a.m.—2:00 a.m.</u> <u>12:00 midnight with Zoning Certificate</u>	<u>UP AUP</u>

¹¹ E.g., Chapter 9.84 (Responsible Beverage Service Training), BMC Section 13.46.050 (Regulations for Operation and Conduct of Entertainment Events Involving Service or Permitted Consumption of Alcohol), Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events), Chapter 13.49 (Social Host Ordinance), Chapter 13.60 (Warning Sign Against Consuming Alcoholic Beverages During Pregnancy), Chapter 13.40 (Community Noise), Chapter 20.67 (Alcohol Product Advertising).

¹² State Business & Professions Code 25631 regulates any on-sale or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m. of the same day.

District	Allowed Hours of Operation	Permit Required to Extend Hours
C-T between Bancroft Way and the north side of Dwight Way C-DMU	24 hours per day, 7 days a week	N/A
C-DMU	6:00 a.m. and 2:00 a.m. 24 hours per day 7 days a week	AUP
MU-R	6:00 a.m. -- 10:00 p.m. <u>12:00 midnight</u>	AUP
C-T between the south side of Dwight Way and Parker Street	7:00 a.m.—12:00 midnight	AUP
C-AC	7:00 a.m.—12:00 midnight Sundays through Thursdays 7:00 a.m.—2:00 a.m. Fridays and Saturday 6:00 a.m.—2:00 a.m.	UP
C-SA	7:00 a.m.—12:00 midnight Sundays through Thursdays 7:00 a.m.—12:00 Fridays and Saturday	UP

The proposed amendment would require applicants to apply for an AUP to extend their hours of operation beyond what is allowed by their current permit or zoning code.

6. Change of Use.

Remove “change of use” permit requirements in commercial districts. Currently, all commercial zoning districts except the C-T, C-DMU and C-AC require an AUP or a UP for a change of use, in addition to the permits required for the proposed use itself. In some cases, change of use requirements are different based on project size (square feet), not use. For example, General Retail is allowed in many commercial zoning districts with a ZC, but an AUP is required if it is a change of use for a space over 3,000 square feet in size.

The proposed amendments include the removal of change of use requirements in commercial zoning districts, both for individual uses and for the size of a proposed use. Any proposed use, whether in an empty (vacant) location or as a replacement for a previous use, would be subject to the same permit requirements as the underlying district; there would not be an added discretionary administrative requirement for a proposed use based solely on a change from a previous use. Uses that are different

than the immediately previous use would still be evaluated based on compatibility with the purpose of the zoning district and any potential impacts and unique characteristics that may require conditions of approval, to the degree a discretionary permit is required. There remain sections of the zoning code that would still require discretionary procedures based on other underlying size-related regulations, as well as changes in floor area or tenant reconfigurations.

7. *ATMs.*

Allow Automatic Teller Machines (ATMs) in commercial districts with a Zoning Certificate (ZC). Currently the BMC requires a UP for an ATM that is not associated with a financial institution. After evaluation and consultation with small businesses, staff determined this is a low priority and there are no revisions included in the proposed amendments related to ATMs.

Additional Zoning Amendments for Planning Commission Consideration

The Planning Commission is requested to consider and provide feedback on the following Zoning amendments, which are based on research and community engagement efforts by OED staff and were not initiated by City Council referral.

8. *Revised levels of permit discretion for Office; Business and Professional; Art/Craft Studios; Pet Stores.*

Allow Office, Business and Professional uses and Art/Craft Studios with a ZC in all commercial zoning districts and permit Pet Stores with an AUP in the C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-DMU and C-AC zoning districts. Currently, Office, Business and Professional, and Art/Craft Studios require an AUP in some commercial zoning districts and a ZC in others. Pet Stores currently require a UP in all but one commercial zoning district (the C-W).

Existing performance standards in the BMC (e.g., Section 13.40.050 Exterior Noise Standards) would continue to provide limits and regulations for any unintended impacts related to the above-mentioned uses. Existing and proposed permit requirements are summarized in Table 6.

TABLE 6: OFFICE; BUSINESS AND PROFESSIONAL; ART/CRAFT STUDIOS; PET STORES – PROPOSED AMENDMENTS

Use	Existing	Proposed
Office, Business and Professional	ZC in C-C, C-U, C-SA, C-DMU, C-W and C-AC; AUP in C-N, C-E, C-NS, C-T and C-SO	ZC in all commercial zoning districts
Art/Craft Studios	ZC in C-AC; AUP in all other commercial zoning districts	ZC in all commercial zoning districts

Pet Stores	ZC in C-W; UP(PH) in all other commercial zoning districts	ZC in C-W; AUP in all other commercial zoning districts
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9. *Live Entertainment.*

Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP, in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, C-W, C-E, MU-LI and MU-R zoning districts. Live Entertainment is defined as:

“Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.”

The proposed changes would allow unamplified Live Entertainment with a ZC and permit amplified Live Entertainment with an AUP, as summarized in Table 7.

TABLE 7: LIVE ENTERTAINMENT – PROPOSED AMENDMENTS

Zones	Permit Required for Live Entertainment	
	Unamplified	Amplified
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, C-W, C-E, MU-LI, MU-R	ZC	AUP
C-N, C-NS, C-W	ZC	UP(PH)
C-E	ZC	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)
M, MM	Not Permitted	Not Permitted

10. *Alcohol and Seated Food Service Requirements.*

Remove the requirement for seated food service to accompany distilled alcoholic beverage service in the C-T, C-NS, and C-SO zoning districts. Currently, the C-T, C-NS, C-SO and the R-BMU (BART Mixed Use) zoning districts require seated food service with distilled alcoholic beverage service. The C-C, C-U, C-N, C-E, C-SA, C-DMU, C-W and C-AC zoning districts do not have this requirement. Under this requirement, business operators must include food service in order to sell and serve distilled alcohol.

The proposed changes would remove this requirement in the C-T, C-SO, and C-NS districts and regulate the use consistently throughout commercial districts citywide. No change is proposed for the R-BMU district.

11. Food Service Establishments – ZC for 3,000 Square Feet or Less and allowed Rental to a Third Party.

Allow Food Service Establishments 3,000 square feet or less with a ZC and permit food service establishments greater than 3,000 square feet with an AUP in all commercial zoning districts and in the R-SMU and R-BMU zoning districts. Several zoning districts vary permit requirements for Food Service Establishments based on floor area or square footage. In some cases, this is a legacy requirement from having a number of different types of food service (i.e., quick service vs. full service) permitted by size (square feet) in the BMC.

In 2019, due to the evolving nature of food service and the availability of food delivery, including the ease of ordering through mobile applications, three food-related use categories (Carry Out Food Store, Quick Service Restaurant, and Full-Service Restaurant) were condensed into one use, *Food Service Establishment*. Combining these three previous uses into one removed the size distinctions that were the basis of varying permit requirements.

The proposed zoning amendments related to Food Service Establishment size include allowing Food Service Establishments under 3,000 square feet with a ZC, and permitting those of 3,000 square feet or more with an AUP, in all commercial districts and in the R-BMU if no alcohol service is provided. The proposed revisions would also remove the requirement that a Notice of Decision (NOD) be posted within 300 feet of a subject property for any Food Service Establishment that receives an AUP in the C-N, C-E, C-NS, C-SA, C-T and C-SO districts.

In addition, the proposed changes include allowing Food Service Establishments in the Arts District Overlay (ADO) with a ZC, consistent with other commercial zoning districts and its underlying zoning district (C-DMU), and would remove unique findings for food service in the Elmwood (C-E) district related to incidental use.

Remove the restriction on renting a Food Service Establishment space to a third party. Currently, BMC Section 23.310.030(C)(3) does not allow a restaurant space that includes incidental beer and wine service to be rented to a third party. In order to provide more flexibility and sustainability to the nature of restaurant operations, and possibly lower an additional hurdle for entrepreneurs, the proposed zoning amendments would remove the restriction on renting restaurant space to a third party.

12. Food Service Establishment Quota.

Remove the quota for Food Service Establishments in the C-E zoning district. Currently the C-E (Elmwood) zoning district is the only remaining zoning district that restricts the

total number of Food Service Establishments.¹³ All other quotas throughout the City were eliminated in 2016, after an evaluation of the quota program citywide.¹⁴ Future changes to the quota system in the Elmwood were to be brought to Council after further consultation with the Elmwood Merchants Association.¹⁵ The proposed amendment would remove the quota on the number of Food Service Establishments in the C-E. OED staff presented this proposal to the Elmwood Merchants Association on April 21, 2023 and the Elmwood Merchants Association Board voted to support the recommendation to remove quotas in the C-E District.

13. Incidental Food Service Establishment Requirements in Manufacturing Districts.

Remove the requirement that incidental Food Service Establishments in buildings under 20,000 square feet in manufacturing zoning districts be indoors only. Currently, Incidental Food Service Establishments, that is Food Service Establishment uses that are co-located with a primarily permitted use, are permitted in manufacturing zoning districts with an AUP or a UP based on square footage. The proposed zoning amendments would allow for outdoor food service in all manufacturing districts, and off-site food or beverage consumption in the MM District.

The AUP permit requirement for food service in the MU-R and the MU-LI zoning districts would still apply for spaces under 5,000 square feet.

14. Drug Paraphernalia in the C-T Zoning District.

Allow drug paraphernalia stores and the sale of drug paraphernalia in the C-T zoning district. Currently, the C-T *Allowed Uses* section of BMC 23.204.110(B)(3) explicitly prohibits drug paraphernalia stores or the sale of drug paraphernalia in the C-T zoning district. No other zoning district includes this prohibition in the corresponding *Allowed Uses* section.

Currently, there are three existing legal Cannabis Retailers established in the C-T zoning district that offer cannabis paraphernalia. The existing regulation is also challenging to enforce since the statewide legalization of cannabis in 1996 through Proposition 215. The proposed change would remove this restriction in the C-T zoning district and would regulate this category of merchandise the same way as other commercial zoning districts, i.e. as general retail or as part of a Smoke Shop.

¹³ Berkeleyside, <https://www.berkeleyside.org/2012/01/17/elmwood-business-quotas-may-change-to-help-startups>, January 17, 2012.

¹⁴ Berkeley City Council, *Removing Numeric Limitations (“Quotas”) in the North Shattuck (C-NS), Telegraph Avenue (C-T), and Solano Avenue (C-SO) Commercial Districts; Amending Berkeley Municipal Code Title 23*, March 29, 2016.

¹⁵ *Ibid*, page 3 of 76.

NEXT STEPS

Based upon Planning Commission and Subcommittee feedback, OED and LUP staff will draft zoning ordinance amendments and prepare for a public hearing at Planning Commission and subsequent recommendation to the City Council.

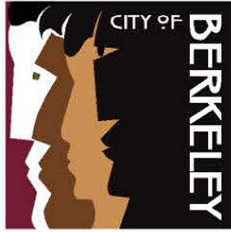
CONTACT PERSON

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Justin Horner, Associate Planner, Planning and Development Department, 510-981-7476

Attachments:

1. City of Berkeley, *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, Action Calendar, Berkeley City Council, October 15, 2019.
2. City of Berkeley, *Referrals Supporting Small Businesses*, Planning Commission Report and Presentation, July 1, 2020.
3. City of Berkeley, *Referral Beer & Wine Service in the M Districts*, Public Hearing, Meeting Minutes, December 4, 2018, Referral Project Number: PRJ0036153.



Office of the City Manager

ACTION CALENDAR

October 15, 2019

(Continued from September 24, 2019)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

RECOMMENDATION

Refer to the Planning Commission modifications to the Zoning Ordinance that are designed to streamline the zoning review process for new or expanding small businesses in Berkeley.

SUMMARY

In April 2017, City Council referred to the City Manager analysis of a number of policy and programmatic initiatives to support the City's small businesses, including "streamlining of zoning, permitting and licensing requirements and processes." In February of 2019, six changes to the Zoning Ordinance were enacted. Subsequently, staff from the Office of Economic Development (OED) have identified eight additional potential modifications to the Zoning Ordinance for the Council and Planning Commission to consider. These eight changes are proposed in Berkeley's commercial zoning districts to make the permitting review process for small businesses less complex and time consuming:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate.
2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts.
3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards.
4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards.
5. Consider modifying the limitation on hours of operations in some commercial districts.
6. Consider the necessity of 'change of use' requirements in commercial districts.
7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts.

- 8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance.

These proposed revisions reflect input from the small business community and are seen by staff as relatively straightforward opportunities to modernize and improve the Zoning Ordinance to reflect present day conditions and community values. Each of these proposed modifications is designed to make the zoning review process for small businesses easier, clearer, and more streamlined.

FISCAL IMPACTS OF RECOMMENDATION

Modifications to the Zoning Ordinance, and the accompanying public hearings, will require staff time from the Planning Department, Office of Economic Development, and City Attorney’s Office to produce staff reports and attend the required Planning Commission and City Council hearings. Proposed modifications are designed to simplify the planning review process for desirable business activities (including new business starts and expansions) and therefore may result in a modest increase in business license tax and sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over decades to reflect Berkeley’s changing values and the changing landscape of property development and land use. Its requirements are intended to guide the City’s growth while preserving its existing character. However, businesses and people operate differently than they did 20 to 50 years ago, and some of the current permit thresholds and ordinance requirements do not recognize these changes. This results in a permitting process that can be unnecessarily lengthy and cumbersome, especially for independently-owned small businesses without the sophistication to navigate our complicated code and permitting process. Since its last major overhaul in 1999, the Zoning Ordinance has been updated in large and small ways at least 16 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense. The modifications proposed here are designed with the unique needs and challenges of small businesses in mind. Further, these recommendations follow up on the recently adopted (January 2019) zoning modifications to support small business that have improved the experiences in several cases over a period of five months.

In order to update our ordinance to better accommodate today’s locally-owned, small, independent enterprises that are highly desirable to our community, and to adhere to best practices in planning and sustainable economic development, staff recommends the eight modifications to the Zoning Ordinance listed above to provide regulatory relief for small businesses in their establishment or expansion phases. These changes are an important component and continuation of a broader effort to improve our organization’s embrace of our customer service and Strategic Plan goals to “foster a dynamic, sustainable, and locally-based economy” and “provide excellent, timely, easily-

Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR
October 15, 2019

accessible service and information to the community,”¹ while honoring the City’s commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND

On April 25, 2017, the City Council referred to the City Manager a bundle of recommendations entitled the “Small Business Support Package” with the objective to “to support the establishment of new, and sustainability of existing small and/or locally owned businesses.” Among the strategies that Council asked staff to analyze and implement included “streamlining of zoning, permitting and licensing requirements and processes for small/local businesses and not-for-profits, to reduce associated costs and delays, and, where appropriate, provide less onerous levels of review.”² In the Council’s annual referral prioritization exercise conducted in May 2017, the item was ranked as the Council’s top priority among the referrals not pertaining to housing.

Subsequently, during summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley’s small businesses and compiled its findings in a work session report and presentation to council on January 16, 2018.³ Small business owners and advocates identified the lengthy permitting review process as one of the primary barriers to small business startup and expansion in Berkeley. As a result, staff recommended six modifications to the Zoning Ordinance that were adopted by the City Council on January 22, 2019.⁴ Over six months since the zoning modifications went into effect, several business have benefited from the amendments by reducing months of permit review time and additional expenses. For example, Thai Corner at 1277 Gilman Street, the Sundhari Spa at 1605 Solano Avenue, and AxeVentures at 2566 Telegraph Avenue each were able to open their business or expand their hours via a Zoning Certificate, rather than wait several months for an AUP. In addition, the zoning modifications were acknowledged by the Northern California Chapter of the American Planning Association (NorCal APA) with an Award of Merit in Economic Planning and Development.

The goal of this second round of zoning changes is again to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. The recommendations distill specific complaints, concerns, challenges, and staff observations into concise changes to the zoning ordinance designed specifically to alleviate long permit queues, clear up applicant confusion, and streamline the experience of doing business in Berkeley. The

¹ See *City of Berkeley 2018-2019 Strategic Plan*, adopted by Berkeley City Council, January 16, 2018.

² See *Small Business Support Package*, adopted by Berkeley City Council, Item 41, April 25, 2017.

³ See *Economic Development Worksession, Small Business Support*.

https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx

⁴ See *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, adopted by City Council, Item 1, January 22, 2019

https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/2019-01-22_Item_01_Ordinance_7635.aspx

Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR
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recommendations are also informed by outreach, conducted February through August 2019, to neighborhood stakeholders, business owners, elected officials and commissioners. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with purpose statements for commercial districts in section 23E of the Zoning Ordinance.

The following recommendations and rationale continue to iterate on the progress and inputs gathered from the first round of zoning amendments to support small businesses:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate. Currently the Zoning Ordinance requires an AUP for Group Class Instruction in the majority of commercial zoning districts. A new yoga studio or exercise studio, or businesses interested in adding classes to an existing business, such as an art gallery or culinary business, are subject to discretionary review through an AUP application. The AUP requirement typically lengthens the zoning review process by three to six months, and typically increases the cost by roughly \$1,000 to \$4,000.

OED staff has observed an increase in business models that employ a combination of retail and/or food consumption with instruction, training and class offerings. As the prevalence of online purchases for soft goods (e.g., clothing, books, music) increases, these creative commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts. Therefore staff recommends amending the Zoning Ordinance to permit these uses in commercial districts with a Zoning Certificate.

2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts. Section 20.12.070 of the Zoning Ordinance and Section 23E.08.020 of the Sign Code have conflicting and contradictory language related to the threshold for the design review of a new sign and the requirements for a Sign Permit. In addition, the current application for Signs and Awnings throughout the City refer to the Downtown Sign Guidelines; those guidelines have been used for the review and processing of signs beyond Downtown. This has led to confusion for applicants, business owners and sign companies wishing to do business in Berkeley. The impact is especially detrimental to small, independent business owners interested in opening a new business with a new sign.

To remedy this, staff recommends a minor modification to the language in Section 23E.08.020 Applicability of Design Review in non-residential districts to clarify the types of signs that are subject to design review and signs that are exempt. In addition, the Planning Commission should determine whether the Downtown Sign Guidelines are suitable for the evaluation of signs throughout the City or only Downtown.

3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Establishment with an Administrative Use Permit (AUP) subject to performance standards. Presently an operator of a food service establishment must obtain a Use Permit with a Public Hearing UP(PH) to serve distilled spirits. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol. The UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for food service purveyors.

Staff recommends the incidental service of distilled spirits at a food establishment be permitted via an AUP, subject to specific conditions of approval and the adopted performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. Nearby residents and property owners will still be notified of the proposed use and will have the ability to provide comments and appeal the Planning Department's decision.

4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards. Currently, tap rooms, wine bars and tasting rooms are subject to the UP(PH) process in most commercial districts. As noted above, the UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol.

Staff recommends that standalone beer and wine sales be permitted via a Zoning Certificate, subject to the performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. The City of Berkeley has an emerging wine and beer scene, resulting in additional tourism, tax revenue, manufacturing and job creation; this policy change could help to encourage its continued expansion.

5. Consider modifying the limitation on hours of operations in some commercial districts. Currently, several commercial zoning districts limit the hours of operation for businesses; e.g., businesses in the Elmwood District may not operate outside of 7am-11pm. In order for a business to exceed the existing limits, they must apply for a UP(PH) (adding approximately five to eleven months and \$5,215 in fees to the zoning approval process). This is a significant obstacle for many business owners and has served as a deterrent for entrepreneurs that may be interested in providing food and drinks to customers after 11:00 pm. Many of the City's entertainment activities end at or after 11:00 pm; in some

districts, the limits on hours of operations restricts businesses from offering complementary services. This could result in lost tax revenue, job opportunities and lost business to adjacent cities. Staff recommends that the Planning Commission consider removing the blanket restriction in some or all commercial districts, allowing business owners to maintain hours of operation that comply with any applicable State laws and are aligned with their business model and customer demand.

6. Consider the necessity for 'change of use' requirements in commercial districts triggered by square footage. Currently in some C-prefixed districts, a change of use above a certain square footage threshold necessitates an AUP or a UP(PH). A commercial change of use requirement based on square footage is atypical; surrounding jurisdictions do not impose this level of scrutiny on neighborhood serving business, which puts Berkeley at a competitive disadvantage in its attraction of new businesses to larger commercial spaces. Each district's Use Table makes allowances for different levels of discretionary review for particular uses based on square footage thresholds. This additional requirement therefore adds to the overall complexity of the zoning ordinance; as it is a supplemental requirement implemented via an asterisk, often it is initially overlooked by applicants.

Staff recommends that the Planning Commission review the appropriateness and benefits of an AUP for a Change of Use and consider eliminating the requirement in some or all commercial districts. Proposed uses would be evaluated and reviewed based on the levels of discretion defined in the Use Table for each district.

7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts. Commercial recreation uses that are classified as Arcades (e.g., Emporium and 90's Experience, Oakland, CA and the High Scores Arcade Museum, Alameda, CA) have become increasingly popular and prevalent. With the rise of internet sales posing challenges to retailers, these types of experiential commercial establishments have become increasingly important to the overall health of commercial districts. However, Berkeley's existing zoning controls make it difficult or impossible to open that type of establishment in most districts. Currently, Arcades are either prohibited or require a UP(PH), which adds approximately five to eleven months and \$5,215 in fees to the zoning approval process. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business.

ATMs also typically require an AUP or UP(PH), and in some districts are prohibited unless part of a Financial Institution. ATMs are often a beneficial and complimentary element for active commercial districts, especially if there's a lack of financial institutions in the area like some parts of Berkeley. Furthermore, the City of Berkeley is considering a policy that would require businesses to accept

cash. Staff recommends that the Planning Commission review the levels of discretion for Arcades and ATM's in commercial districts.

8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance. The Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades provide additional requirements and limitations for certain uses in the Zoning Ordinance. Several of the regulations are limiting and don't reflect the current standards in other jurisdictions. In addition, these sections would need to be modified to be consistent with the recommended Zoning Ordinance amendments above. Furthermore, the Public Convenience or Necessity findings for alcohol use and the distance buffers for Arcades are overly restrictive, don't reflect best practices and conflict with typical business practices. For example, Section 23E.16.040(A)(1)(b)(5) states "*no beer or wine may be distributed in its original bottle or can.*" Staff recommends that the Planning Commission consider updating the Special Use section of the ordinance to be reasonable, enforceable and be consistent with surrounding jurisdictions.

Next Steps

Staff recommends that City Council review and adopt this referral to Planning Commission. Subsequently, Planning Department staff would present the Planning Commission with information, case studies and analysis relevant to each proposed change, seek guidance from the Commission, and draft Zoning Ordinance amendments for the Commission's review. It is possible that some of the recommendations may be implemented as part of the Zoning Ordinance Revision Project (ZORP), a current initiative to modernize and streamline the Zoning Ordinance. Planning Commission hearings will provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups.

Strategic Plan Connection

This referral is a component of a Strategic Plan Priority Project (Small Business Support), advancing our goals to provide an efficient and financially-healthy City government; to foster a dynamic, sustainable, and locally-based economy; and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Small businesses make up the bulk of Berkeley's economy. Small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities to shop in neighborhood commercial districts that are accessible by foot, bicycle and transit.

RATIONALE FOR RECOMMENDATION

Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's economic, social and civic wellbeing. These zoning changes represent the

Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR
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most immediate and straightforward approach the City can take to assist small businesses and potentially reduce commercial vacancies. They are designed specifically to support small independent operators seeking to invest and activate these districts, and will provide the community with needed goods and services. These changes also have the added addition of improving our city's internal permitting processes, by shortening timelines and improving customer service.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered various other changes to levels of discretionary review and other zoning compliance review for commercial uses, but recommends moving forward with the modifications proposed above while continuing to gather input on additional changes.

CONTACT PERSON

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Kieron Slaughter, Community Development Project Coordinator, (510) 981-2490



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 1, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner
Alene Pearson, Principal Planner

SUBJECT: Referrals Supporting Berkeley Businesses

BACKGROUND

City Council has referred Planning Commission a set of five items that support Berkeley businesses and bolster Berkeley's commercial districts and commercial businesses. Referrals range in scope from broad suggestions to targeted requests but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses.

In light of current events, the importance of addressing business needs is a high priority as "shelter-in-place"¹ orders have significantly impacted and strained local businesses. The City has responded by adopting urgency ordinances to address acute needs of businesses. Addressing referrals in this report has the potential to compliment those efforts by supporting the short and long-term health of the business community.

The five business referrals presented in this report include the following:

1. Expanding the Downtown Arts District (Mayor Bates, 10/18/16)
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 12/4/18)
3. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste et al., 6/25/19)
4. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 10/15/19)
5. Referral: Update the Definition of "Research and Development" (Mayor Arreguin et al., 3/10/20)

¹ Shelter-in-place - an official order, issued during an emergency that directs people to stay in the indoor place or building that they already occupy and not to leave unless absolutely necessary.

The overarching goal of these referrals is to provide flexibility to businesses that are trying to adapt to a changing market. An overview of each referral is provided below.

1. [**Expanding the Downtown Arts District \(Mayor Bates, 10/18/16\)**](#) - The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and commercial uses that generate pedestrian vitality in the downtown to encourage a broader economic revitalization of the area. Allowable uses in the ADO focus on pedestrian oriented ground-floor uses such as food uses with seating, art galleries, bookstores, and other culturally compatible uses, while prohibiting carry out and office uses. This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.

Staff proposes to review both overlay boundaries and allowable uses in order to bring a set of amendments forward that meet the purposes of the ADO and the underlying zoning districts.

2. [**Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses \(City Manager, 12/4/18\)**](#) - As part of the Small Business Support Package that was adopted in December of 2018, City Council reduced level of discretion for restaurants in commercial districts serving beer and wine incidental to seated food service. This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.

Staff proposes to review existing regulations in each of the manufacturing districts in order to bring a set of amendments forward that provides flexibility to restaurants and meets the purposes of West Berkeley Plan.

3. [**Zoning Ordinance Modification for Elmwood Commercial Districts \(Councilmember Droste, 6/25/19\)**](#) - The BMC currently prohibits Amusement Device Arcades in the Elmwood Commercial District (C-E district). This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

For a more comprehensive review of this referral, staff proposes to review existing levels of discretion for Amusement Device Arcades throughout all commercial districts and develop a set of amendments that are flexible and consistent with local regulations and State laws.

4. [**Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses \(City Manager, 10/15/19\)**](#) - Early in 2019, the Office of Economic Development (OED) conducted outreach to gain a better understanding of challenges and concerns facing small business. These conversations led the OED to recommend to City Council a second set of supports for small businesses. This referral presents OED's eight recommendations for consideration and discussion:

- a. **Permit group instruction with a Zoning Certificate (ZC) in commercial districts.** Currently most commercial districts permit group instruction with an Administrative Use Permit (AUP).

Staff proposes to review existing regulations to bring a set of amendments forward that consider flexibility needed for experience-based business uses.

- b. **Clarify design review and guidelines for signs in commercial districts –** The approval process and requirements for obtaining sign permits in commercial districts can be updated to improve clarity for applicants and consistency between projects and within districts.

Staff proposes to review the Sign Ordinance and Zoning Ordinance to develop language that clarifies processes for obtaining a permit for new and existing signs. This will also include exploring opportunities to further codify existing processes.

- c. **Permit the sale of Distilled Spirits that are incidental to food service with and AUP subject to performance standards -** Presently an operator of a Food Service Establishment must obtain a Use Permit with a Public Hearing (UP(PH)) to serve Distilled Spirits. The review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control – a state agency.

Staff proposes reviewing existing permit requirements in commercial districts and developing a set of amendments to address any duplicative regulations.

- d. **Permit standalone beer and wine sales with ZC subject to performance standards -** Currently, tap rooms, wine bars, and tasting rooms are subject to a UP(PH) process in most commercial districts.

Staff proposes reviewing existing permit requirements for standalone beer and wine sales in the commercial districts and per ABC licensing to identify opportunities and constraints of changing existing levels of discretion.

- e. **Review the limitation on “Hours of Operation” in commercial districts -** In order for a business to extend Hours of Operation a UP(PH) is required.

Staff proposes to examine existing Hours of Operation for all commercial districts to identify opportunities for modifications.

- f. **Review “Change of Use” requirements in commercial districts triggered by square footage -** Currently in some commercial districts, a change of use above a certain square footage threshold requires an AUP or UP(PH).

Staff proposes to examine permit requirements for change of use in commercial districts, assess the need for these thresholds, and develop amendments for potential changes.

- g. Review levels of discretion for “Amusement Device Arcades” and “Automatic Teller Machines” (ATMs) in commercial districts** - Currently Amusement Device Arcades are prohibited or require a UP(PH) to operate. ATMs also typically require an AUP or UP(PH), and in some districts, are prohibited unless part of a Financial Institution.

Staff proposes to review requirements for Amusement Device Arcades, Amusement Devices as an incidental use, and ATMs in all commercial districts to and develop a set of amendments that are flexible and consistent with local regulations and State laws

- h. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the potential changes to the Zoning Ordinance** – based on some of the ideas presented above, Special Use Standards may need updating.

Staff will identify all sections of the Zoning Ordinance needing updates to reflect the changes recommended by Planning Commission in this referral package.

- 5. [Referral: Update the Definition of “Research and Development” \(Mayor Arrequin, 3/10/20\)](#)** - Research and Development (R&D) has evolved to take on many new forms that are not included today’s definition. New technology allows R&D to be conducted in spaces that may, at first glance, appear to be an office or light industrial environment rather than a traditional “laboratory” with, for example, benches and sinks. This referral requests the definition of “Research and Development”² be updated to reflect evolving business practices.

Staff proposes to review the existing definition, evaluate language suggested in the referral, and draft language that reflects the uses in R&D facilities.

DISCUSSION

Over the next couple of months, Planning Commission will be asked to review and consider proposed Zoning Ordinance amendments that address the five City Council referrals presented above. This section provides an overview of staff’s recommended approach and questions for Planning Commission to consider and discuss.

Analysis Approach

² BMC — [23F.04.010 Definitions](#)

Staff reviewed the five referrals, outlined research questions and identified a pattern with which to group requested amendments:

1. Activity Based Experiences
2. Allowable Uses
3. Alcohol Service
4. Sign Ordinance Updates

The sections below provide a detailed overview of rationale for grouping amendments and lists research questions. Planning Commission is asked to consider the following questions and provide staff with feedback on additional questions that need to be asked or modifications that should be made.

1. Activity Based Experiences

Reasoning: Emerging business models focus on creating activity-based experiences for customers. Research questions in this category examine the potential benefits of lowering level of discretion for businesses that seek to offer activity-based experiences. Addressing questions for group instructions and arcades under the same category, will allow a broader understanding of how modifications to the BMC can provide flexibility for such businesses to exist and thrive in Berkeley.

Research Questions:

- *Group Classes* - What are the permit requirements for group classes in commercial and manufacturing districts? What are the permit requirements for serving food or beer and wine for group classes in commercial and manufacturing districts?
- *Arcades* - What are the permit requirements for arcades in commercial and manufacturing districts? What are the Special Use Standards for Arcades?

2. Allowable Uses

Reasoning: Research questions in this category explore where opportunities exist to facilitate activity that fosters a thriving district and enables businesses to expand their roots in Berkeley. Questions in this category have the potential to highlight simple modification that can bolster business activity throughout the City.

Research Questions:

- *Change of Use Thresholds* – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?

- *Expanding Hours of Operation* – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?
- *Standalone Automatic Teller Machines (ATM)* – What are the regulations for standalone ATMs in commercial districts? What are the implications of lowering levels of discretion?
- *Defining Research & Development* – What are the limitations of the existing definition and the functional needs of R&D facilities?
- *Expanding the Downtown Arts District Overlay* – What are the existing uses and activity types along the current boundaries of the Downtown ADO? What additional ground-floor uses would complement the services of existing businesses in the Downtown ADO?

3. Alcohol Service

Reasoning: The Alcohol Beverage Control (ABC) is a state agency that regulates the sale, service, and production of alcohol. Businesses wishing to provide services involving alcohol must obtain a license by the state agency. In order to receive an ABC license, the business must first meet a set of standards enforced and regulated by the ABC, which are depended on license type³. Questions presented in this category help identify areas where there's duplication within BMC and ABC regulations. Additionally, it enables a focused conversation on the limitations placed on local flexibility by State regulations. By conducting the review and analysis of this subject matter under one category, there can be a deliberate effort to find the balance between supporting emerging business ideas, while addressing a common concern—a safe community.

Research Questions:

- *Distilled Spirits as incidental to food service* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?
- *Standalone Beer & Wine Sales* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?
- *Updates to Special Use Standards* – What are the Special Use Standards for Alcoholic Beverages? If modifications to Uses are proposed, what updates will be necessary for Special Use Standards to maintain consistency in the BMC?

³ ABC License Types - <https://www.abc.ca.gov/licensing/license-types/>

- *Beer and Wine as incidental to a food service in the manufacturing districts* – What are the permit requirements to serve beer and wine incidental to food service in the manufacturing districts? Examine the purpose of manufacturing and rationale for beer and wine sales in these districts. What opportunities and constraints exist to lower levels of discretion?

4. Sign Ordinance Updates

Reasoning: The Sign Ordinance can be found in BMC Title 20. Planning Commission does not have purview over this Title; however, Zoning Adjustment Board and Design Review Committee must review signs in the context of development projects. The requested updates are already being considered by design staff and will be shared with the Design Review Committee for feedback. For this reason. Staff has put this referral request into a separate category. If appropriate, staff can share these edits with Planning Commission, but these updates will most likely move forward on a different schedule than those presented above.

Research Questions:

- *Design Review Thresholds* – What are the design review requirements for new or modified signs? What are the design review requirements for replacement signs? Is there an opportunity to clarify the design review process and applicability for signs in the BMC?
- *Master Sign Program* – What existing sign processes can be codified in the BMC through a Master Sign Program?
- *Design Review Guidelines (DRG)* – How do DRGs work with the BMC and when are they applicable?

Planning Commission Questions:

- *Does the grouping of these questions and considerations reflect an intuitive workflow?*
- *Will the proposed research provide ample information for Planning Commission to consider amendments that address referral requests?*
- *Are there any additional questions or considerations staff should research?*

NEXT STEPS

Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing to consider items presented and formulate recommendations for City Council.

July 1, 2020

Links:

Expanding the Downtown Arts District (Mayor Bates, 10/18/16):

https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_24_Expanding_the_Downtown_Arts.aspx

Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 12/4/18):

https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-4_Item_C_Modifications_to_the_Zoning_Ordinance_to_Support_Small_Businesses.aspx

Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19):

https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx

Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19):

https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-15_Item_34_Referral_Response_Modifications.aspx

Referral: Update the Definition of “Research and Development” (Mayor Arreguin, 3/10/20):

https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-10_Item_17_Referral_Update_the_definition.aspx

REFERRALS SUPPORTING BERKELEY BUSINESSES

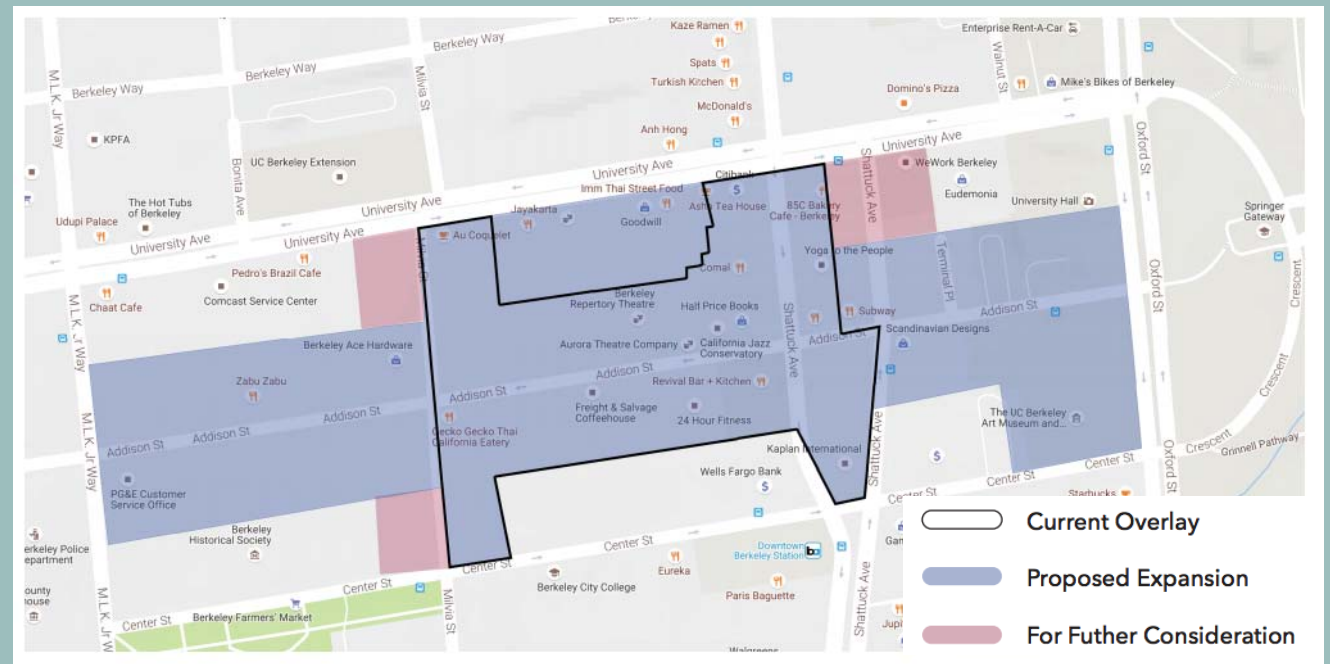
Planning Commission
July 1, 2020

OVERVIEW

- Overview of Referrals
- Analysis Approach
- Feedback from Planning Commission
- Next Steps

OVERVIEW OF REFERRALS

- 1 Expanding the Downtown Arts District Overlay (ADO) (10/18/16) - This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.



OVERVIEW OF REFERRALS

- 2 Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/4/18) - This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.

- 3 Zoning Ordinance Modification for Elmwood Commercial Districts (6/25/19) - This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

OVERVIEW OF REFERRALS

- 4 Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19) - This referral presents OED's eight recommendations for consideration and discussion:
- a. Permit group instruction with a Zoning Certificate (ZC) in commercial districts
 - b. Clarify design review and guidelines for signs in commercial districts.
 - c. Permit the sale of Distilled Spirits that are incidental to food service with and AUP subject to performance standards
 - d. Permit standalone beer and wine sales with ZC subject to performance standards.

OVERVIEW OF REFERRALS

- 4
 - e. Review the limitation on “Hours of Operation” in commercial districts
 - f. Review “Change of Use” requirements in commercial districts triggered by square footage
 - g. Review levels of discretion for “Amusement Device Arcades” and “Automatic Teller Machines” (ATMs) in commercial districts
 - h. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the potential changes to the Zoning Ordinance

OVERVIEW OF REFERRALS

- 5** Referral: Update the Definition of “Research and Development” (3/10/20) - This referral requests the definition of “Research and Development” be updated to reflect evolving business practices.

ANALYSIS APPROACH

1. Activity Based Experiences
2. Allowable Uses
3. Alcohol Service
4. Sign Ordinance Updates

1. ACTIVITY BASED EXPERIENCES

Research Questions:

Group Classes - What are the permit requirements for group classes in commercial and manufacturing districts? What are the permit requirements for serving food or beer and wine for group classes in commercial and manufacturing districts?

Arcades - What are the permit requirements for arcades in commercial and manufacturing districts? What are the Special Use Standards for Arcades?

2. ALLOWABLE USES

Research Questions:

Change of Use Thresholds – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?

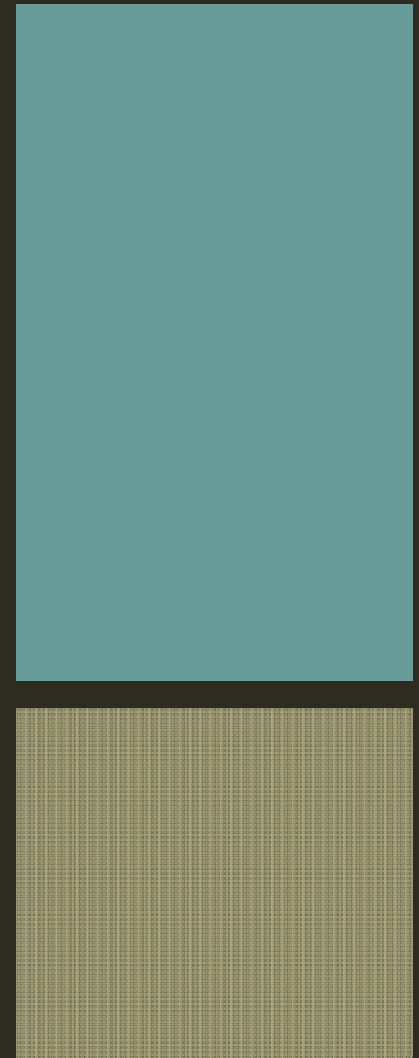
Expanding Hours of Operation – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?

2. ALLOWABLE USES

Standalone Automatic Teller Machines (ATM) – What are the regulations for standalone ATMs in commercial districts? What are the implications of lowering levels of discretion?

Defining Research & Development – What are the limitations of the existing definition and the functional needs of R&D facilities?

Expanding the Downtown Arts District Overlay – What are the existing uses and activity types along the current boundaries of the Downtown ADO? What additional ground-floor uses would complement the services of existing businesses in the Downtown ADO?



3. ALCOHOL SERVICE

Research Questions:

Distilled Spirits as incidental to food service – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constraints exist to lower levels of discretion?

Standalone Beer & Wine Sales – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constraints exist to lower levels of discretion?

3. ALCOHOL SERVICE

Beer and Wine as incidental to a food service in the manufacturing districts – What are the permit requirements to serve beer and wine incidental to food service in the manufacturing districts? Examine the purpose of manufacturing and rationale for beer and wine sales in these districts. What opportunities and constraints exist to lower levels of discretion?

Updates to Special Use Standards – What are the Special Use Standards for Alcoholic Beverages? If modifications to Uses are proposed, what updates will be necessary for Special Use Standards to maintain consistency in the BMC?

4. SIGN ORDINANCE UPDATES

Research Questions:

Design Review Thresholds – What are the design review requirements for new or modified signs? What are the design review requirements for replacement signs? Is there an opportunity to clarify the design review process and applicability for signs in the BMC?

Master Sign Program – What existing sign processes can be codified in the BMC through a Master Sign Program?

Design Review Guidelines (DRG) – How do DRGs work with the BMC and when are they applicable?

QUESTIONS FOR PLANNING COMMISSION

- *Does the grouping of these questions and considerations reflect an intuitive workflow?*
- *Will the proposed research provide ample information for Planning Commission to consider amendments that address referral requests?*
- *Are there any additional questions or considerations staff should research?*

NEXT STEPS

Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing to consider items presented and formulate recommendations for City Council.

1. Expanding the Downtown Arts District
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/04/18)
3. Zoning Ordinance Modification for Elmwood Commercial Districts
4. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (10/15/19)
5. Referral: Update the Definition of “Research and Development”

OVERVIEW OF REFERRALS

1

Expanding the Downtown Arts District (10/18/16) - This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.

2

Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/4/18) - This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.

3

Zoning Ordinance Modification for Elmwood Commercial Districts (6/25/19) - This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, December 4, 2018
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:05 p.m.

Present: Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin

Absent: None

Ceremonial Matters:

1. Recognition of outgoing City Councilmembers and City Auditor.

Recess 7:55p.m. – 8:15 p.m.

City Manager Comments: None

City Auditor Comments: None

Public Comment on Non-Agenda Matters: 8 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 4 speakers.

Action: M/S/C (Wengraf/Hahn) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Consent Calendar – Continued Business

A. **Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**

(Continued from November 27, 2018)

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,633-N.S. adding Berkeley Municipal Code Chapter 13.69 regarding safe storage of firearms.

First Reading Vote: Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

Financial Implications: Minimal

Contact: Farimah Brown, City Attorney, 981-6950

Action: Adopted second reading of Ordinance No. 7,633-N.S.

B. **Amendment: FY 2019 Annual Appropriations Ordinance** *(Continued from November 27, 2018)*

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,634-N.S. amending the FY 2019 Annual Appropriations Ordinance No. 7,617–N.S. for fiscal year 2019 based upon recommended re-appropriation of committed FY 2018 funding and other adjustments authorized since July 1, 2018, in the amount of \$152,385,440 (gross) and \$105,727,086 (net).

First Reading Vote: Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

Financial Implications: See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

Action: Adopted second reading of Ordinance No. 7,634-N.S.

Consent Calendar

1. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 4, 2018**

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.

Financial Implications: Parks Tax Fund - \$375,000

Contact: Henry Oyekanmi, Finance, 981-7300

Action: Approved recommendation.

Consent Calendar

2. Jointly Apply for and Accept \$1.3M in State of California No Place Like Home Program (NPLH) Funds and Award NPLH Technical Assistance Funds to the Berkeley Way Development

From: City Manager

Recommendation: Adopt three Resolutions that enable the proposed Berkeley Way development project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to apply for and accept the City's Noncompetitive Allocation of State of California No Place Like Home (NPLH) housing program funds. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project;
2. Authorizing the City Manager to prepare and submit a joint application with the proposed Berkeley Way development for Berkeley's \$1,350,299 in State No Place Like Home funds;
3. Awarding \$65,000 in State No Place Like Home (NPLH) Technical Assistance program funding to the proposed Berkeley Way development; and
4. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400
68,690–N.S. (Accept NPLH Funds); Resolution No. 68,691–N.S. (Award NPLH Funding); and Resolution No. 68,692–N.S. (Participate in NPLH).

3. Reserving Up to an Additional \$12.5M in Housing Trust Funds for the Berkeley Way Development

From: City Manager

Recommendation: Adopt a Resolution reserving up to an additional \$12.5M in Housing Trust Funds for the potential Berkeley Way development, bringing the total reserved amount to up to \$23.5 million, contingent on the development's securing full funding and any required land use approvals and permits in the next twenty-four months.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

Action: Adopted Resolution No. 68,693–N.S.

Consent Calendar

4. 2019 Health Plan Changes

From: City Manager

Recommendation: Adopt two Resolutions:

1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) -0.44% decrease for Kaiser S1 Group #60 (Active Group); (b) -0.95% decrease for the HSA-Qualified Deductible HMO Plan (Active Group); (c) -3.38% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) 6.08% increase for Post-65 Senior Advantage (Retiree Group).

2. Approving rates for the Sutter Health Plus health plans as follows: (a) 5.04% increase for HMO Group (Active Group); and (b) 9.13% increase for Pre-Medicare HMO Group (Retiree Group).

The health plan premium rates will be effective for the period of January 1, 2019 through December 31, 2019.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, 981-6807

Action: Adopted Resolution No. 68,694–N.S. (Kaiser); and Resolution No. 68,695–N.S. (Sutter Health) revised in Supplemental Reports Packet #2 to correct 2018 Monthly Premium Rates and correlating percentages for Kaiser Senior Advantage Retiree Group Plan.

5. Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)

From: City Manager

Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers' Compensation Program, in an amount not to exceed \$219,000.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, 981-6800

Action: Adopted Resolution No. 68,696–N.S.

6. Contract No. 10853A Amendment: Atera Prime, Inc. DBA Emgage, Inc. for Sharepoint and Intranet Implementation Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10853A with Atera Prime, Inc. DBA Emgage Inc. for implementation services of Emgage's Sharepoint and Intranet implementation services, for an amount not-to-exceed \$72,000 and a total contract value not-to-exceed \$156,275 from March 28, 2018 to June 30, 2020.

Financial Implications: See report

Contact: Savita Chaudhary, Information Technology, 981-6500

Action: Adopted Resolution No. 68,697–N.S.

Consent Calendar

7. Beverage Container Recycling City/County Payment Program

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to submit an application to the Department of Resources Recycling and Recovery (CalRecycle) for the Beverage Container Recycling City/County Payment Program for the period of December 4, 2018 through December 3, 2023; to accept funds and execute all necessary applications, payment requests, agreements and any amendments; and to appropriate funding for related expenditures, subject to securing the program funds.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, 981-6300

Action: Adopted Resolution No. 68,698–N.S.

8. Adopt a Shared Electric Scooter Pilot Program

From: City Manager

Recommendation: Adopt a Resolution approving the terms and conditions for a Shared Electric Scooter Pilot Franchise Program.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, 981-6300

Action: M/S/C (Arreguin/Maio) to accept revised material from staff on Item 8.

Vote: All Ayes.

Action: Moved to Action Calendar. 12 speakers. M/S/C (Worthington/Hahn) to adopt Resolution No. 68,699–N.S. amended to include provisions for privacy, reporting to Council, public survey, and compliance measures and refer comments from the Council to staff for consideration.

Vote: Ayes – Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Maio; Abstain – Davila.

Council Consent Items

9. Appointment of Vice-President of the Council

From: Mayor Arreguin

Recommendation: Rescind Resolution No. 67,768-N.S. and adopt a Resolution establishing a one-year term for the office of Vice-President of the Council, to be appointed at the first Council meeting in December every year.

Financial Implications: None

Contact: Jesse Arreguin, Mayor, 981-7100

Action: Moved to Action Calendar. 3 speakers. M/S/C (Arreguin/Hahn) to adopt Resolution No. 68,700–N.S. as revised in Supplemental Reports Packet #2 to allow for appointments over a two-year period.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.

Council Consent Items

- 10. Appointment of Councilmember Sophie Hahn as Vice-President of the Council**
From: Mayor Arreguin and Councilmember Bartlett
Recommendation: Adopt a Resolution appointing Councilmember Sophie Hahn to be the Vice-President of the Council for a term of one year beginning December 2018 to December 2019.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, 981-7100
Action: Moved to Action Calendar. 2 speakers. M/S/C (Maio/Worthington) to adopt Resolution No. 68,701–N.S. as revised in Supplemental Reports Packet #2 to appoint Councilmember Wengraf as Vice-President of the Council starting December 2018 and Councilmember Hahn starting December 2019.
Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.
- 11. Revitalization of the Civic Center Park Fountain**
From: Mayor Arreguin, Councilmembers Harrison and Hahn
Recommendation: Refer to the City Manager to work with the Turtle Island Fountain Project in developing a plan to revitalize the fountain at Martin Luther King Jr. Civic Center Park.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100
Action: Councilmember Bartlett added as a co-sponsor. Approved recommendation amended to refer to staff to consider this referral as part of the Civic Center Park visioning RFP.
- 12. Authorizing Additional Inclement Weather Shelter from December 2018-April 2019**
From: Mayor Arreguin
Recommendation:
1. Authorize the City Manager to open an additional as-needed inclement weather Winter Shelter from December 2018-April 2019 to provide a safe, dry indoor location for our unhoused community;
2. Approving the allocation of \$60,000 in funding for this additional inclement weather shelter with funds from the June 26, 2018 budget appropriation for an expanded Emergency Shelter program or by state Homeless Emergency Aid Program (HEAP) funding; and
3. Authorizing the City Manager to amend Contract No. 10577B with Dorothy Day House for the operation of the as-needed inclement weather shelter.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, 981-7100
Action: Councilmembers Davila, Hahn, and Bartlett added as co-sponsors. Approved recommendation.

Action Calendar – Public Hearings

C. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses *(Continued from November 27, 2018)*

From: City Manager

Recommendation: Conduct a public hearing and adopt the first reading of an Ordinance amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by:

1. Reducing the amount of parking required for businesses moving into existing commercial spaces;
2. Simplifying food service categories by reducing them from three to one;
3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces;
4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules;
5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and
6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

Public Testimony: The Mayor opened the public hearing. 3 speakers. M/S/C (Wengraf/Droste) to close the public hearing.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – None; Abstain – None; Absent – Davila, Worthington.

Councilmember Worthington absent 10:05 p.m. – 10:29 p.m.

Councilmember Davila absent 10:25 p.m. – 10:33 p.m.

Action: M/S/C (Droste/Maio) to adopt first reading of Ordinance No. 7,635–N.S. as proposed by staff and amended as follows:

- Refer to staff and the Planning Commission to consider amendments related to beer and wine sales in the M District.
- Retain the 300-foot noticing requirement for all projects whose level of review will be reduced from UP(PH) to AUP; and report to Council on the effects of the requirement after one year.
- Retain the requirement for findings for AUPs for food establishments in the C-W district. Second reading scheduled for December 11, 2018.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:30 p.m.

Vote: All Ayes.

Action Calendar – Public Hearings

13. Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations for a portion of 1050 Parker Street / 2621 Tenth Street from a Manufacturing designation to Avenue Commercial, and amending the West Berkeley Plan land use designation from Mixed Use / Light Industrial to General Commercial (Amendments affect Assessor Parcel Numbers (APNs): 054-1763-001-03, 054-1763-010-00); and
2. Adopt first reading of an Ordinance:
 - a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and
 - b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03); and
3. Adopt a Resolution adopting findings under the California Environmental Quality Act (CEQA) that determine how potential impacts are to be mitigated, to adopt an Initial Study / Mitigated Negative Declaration that concludes that all impacts of the rezone and re-designations can be reduced to a less-than-significant level under CEQA, and to adopt a Mitigation Monitoring and Reporting Program that ensures the measures will be implemented.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

Action: M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 11:45 p.m.

Vote: Ayes – Maio, Bartlett, Hahn, Wengraf, Worthington, Arreguin; Noes – Davila, Harrison, Droste.

Public Testimony: The Mayor opened the public hearing. 10 speakers.

M/S/C (Wengraf/Harrison) to continue the public hearing to a date certain: December 11, 2018.

Vote: All Ayes.

Action Calendar – Continued Business

- D. Structure for City Council Standing Policy Committees** *(Continued from November 27, 2018. Item contains supplemental materials)*
From: City Manager
Recommendation: Adopt a Resolution approving the framework and procedures for standing policy committees of the City Council as part of the City's legislative process.
Financial Implications: See report
Contact: Dee Williams-Ridley, City Manager, 981-7000
Action: M/S/C (Arreguin/Worthington) to hold over Items D and E to December 11, 2018.
Vote: All Ayes.
- E. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from November 27, 2018)*
From: Councilmembers Bartlett, Worthington, and Davila
Recommendation: That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.
Financial Implications: Minimal
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
Action: Item E held over to December 11, 2018.
- F. Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations** *(Continued from November 27, 2018)*
From: Councilmembers Davila and Harrison
Recommendation: Short-term Referral to the Planning Commission and Design Review Committee (DRC) to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new residential construction and certain alterations. The Planning Commission and DRC should consider the following:
-Establishing appropriate tree planting requirements, e.g. a ratio of trees required per square foot, for new single-family and multi-family construction, as well as qualifying alterations to existing residential buildings. -Establishing appropriate tree planting requirements for larger projects, including options to plant trees at alternative locations identified by the City and within the City limits. The developer should incur the cost of maintenance of the trees for a defined period of years after planting.
-Establishing appropriate California Natives species requirements. Refer to the California Native Plant Society for a list of eligible trees. <https://www.cnps.org/>
Financial Implications: Unknown
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
Action: Item F held over to December 11, 2018.

Action Calendar – Continued Business

- G. City Council Short Term Referral Process – Monthly Update** *(Continued from November 27, 2018)*
From: City Manager
Contact: Mark Numainville, City Clerk, 981-6900
Action: Amended to add back to the list Item C from the 12/5/2017 agenda titled Ministerial Approval of Zoning-Compliant Affordable Housing. Moved to Consent Calendar.

Action Calendar – New Business

- 14. Presentation: Pedestrian Master Plan Update**
From: City Manager
Contact: Phillip Harrington, Public Works, 981-6300
Action: M/S/C (Arreguin/Worthington) to refer Item 14 to the Agenda Committee for future scheduling.
Vote: All Ayes.
- 15a. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**
From: Community Environmental Advisory Commission
Recommendation: Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.
Financial Implications: See report
Contact: Viviana Garcia, Commission Secretary, 981-7460

Action Calendar – New Business

15b. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

From: City Manager

Recommendation: Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

Action: Items 15a and 15b held over to December 11, 2018.

16. Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner

From: Councilmember Worthington

Recommendation: Adopt revisions to Chapter 3.80 in Berkeley Municipal Code (BMC) concerning Membership On Boards And Commissions to allow City Staff and/or Mayor and City Council employees to serve as a Commissioner by repealing section 3.80.030.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: Item 16 removed from the agenda by Councilmember Worthington.

Information Reports

17. City Council Referral Process – 2018 Interim Update

From: City Manager

Contact: Mark Numainville, City Clerk, 981-6900

Action: Received and filed.

18. Civic Arts Commission 2018-2019 Work Plan

From: Civic Arts Commission

Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 0 speakers.

Adjournment

Action: M/S/C (Harrison/Maio) to adjourn the meeting in memory of:

1. Deanna Despain, Former Berkeley City Clerk
2. George H. W. Bush, 41st President of the United States

Vote: All Ayes.

Adjourned at 11:44 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of December 4, 2018 as approved by the Berkeley City Council.


Mark Numainville, City Clerk

Communications

Okinawa Environmental Justice organization

1. Diana Bohn

Teenager and Grandson of Holocaust Survivors Demand Climate Action

2. Jane Kelly

Adding Attic Insulation Requires Hardwired Smoke and CO Detectors

3. David Lerman

Open Shelters Now

4. Adam Kol

Mayor's Comments on November 9th, J Article

5. Carol Sanders (2)

2-1-1 Monthly Report for October 2018

6. Eden I&R

Supplemental Communications and Reports 1

Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review

7. Mitchel Bornstein

Item #18: Civic Arts Commission 2018-2019 Work Plan

8. Gina Moreland
9. Laurie Rich

Supplemental Communications and Reports 2

Item #4: 2019 Health Plan Changes

10. Revised material, submitted by Human Resources

Item #8: Adopt a Shared Electric Scooter Pilot Program

11. Bryce Nesbitt
12. Irene Rosenthal

Item #9: Appointment of Vice-President of the Council

13. Revised material, submitted by Mayor Arreguin

Item #10: Appointment of Councilmember Sophie Hahn as Vice-President of the Council

14. Revised material, submitted by Mayor Arreguin

Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review

15. Patrick Sheahan
16. Rick Auerback

Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

17. Brian Cliff
18. Jerry McDaniel
19. Bill Hsu
20. Charles Pappas

Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations

21. Miranda Ewell, Bernard Marszalek and Stephen Most

Item #15a: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties

22. Jim McGrath

Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner

23. Evan McDonald
24. Sharon Rudnick
25. Carol Strand
26. April Gilbert
27. Jack Kurzweil
28. Marti Grubb
29. Mark Stuhr
30. Fran Haselsteiner
31. Don Melandry

- 32. Eric Friedman
- 33. Jessica Behrman
- 34. Steven Berger
- 35. Wende Micco
- 36. Judy Hunt
- 37. Barbara Gilbert

Item #18: Civic Arts Commission 2018-2019 Work Plan

- 38. Paula Shryne

Supplemental Communications and Reports 3

Item #8: Adopt a Shared Electric Scooter Pilot Program

- 39. Revised material, submitted by Public Works
- 40. George Porter

Item #C: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

- 41. Presentation, submitted by Office of Economic Development
- 42. Loni Gray
- 43. Nicole Meyer and Chris Meyer

Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review

- 44. Presentation, submitted by Planning

Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program

- 45. Carol Denney

Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations

- 46. Theo Posselt

Item #14: Pedestrian Master Plan Update

- 47. Presentation, submitted by Transportation Department

Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner

- 48. Carol Denney

Mobility Systems

- 49. Avotcja Jiltonilro

In Appreciation of Councilmember Maio
50. Friends of Ohlone Park

Fountain Project at MLK Civic Center Park
51. Unknown