



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

ACTION CALENDAR
 January 16, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Ben Bartlett (Co-Author), Councilmember Terry Taplin (Co-Author)

Subject: Referral: Neighborhood-Scale Commercial

RECOMMENDATION

Refer to the City Manager and Planning Commission to consider and develop policies to permit neighborhood-scale retail uses in residential zones to increase economic opportunity, vitality, and walkability in Berkeley neighborhoods. Changes may include zoning alterations or modifications to use permit requirements.

In order to inform any potential policy changes, staff should conduct analysis and outreach to understand the market demand for neighborhood-scale commercial uses and consider best practices from other municipalities.

Staff and the Planning Commission should consider conditions and development of performance standards to avoid detrimental impacts on surrounding residential uses and neighborhoods, including but not limited to limitations on noise, odors, smoke, waste generation, operating hours, signage, loading/unloading activity, setbacks, tenant protections, limitations on selling alcohol for on-site consumption, considerations for ADA compliance, restricting applicants to businesses with fewer than three locations, and establishing different permitting requirements depending on square footage, proposed use, or other factors.

POLICY COMMITTEE RECOMMENDATION

On December 4, 2023, the Land Use, Housing, & Economic Development Committee adopted the following action: M/S/C (Robinson/Harrison) to send the item as revised to the City Council with a positive recommendation. Vote: All Ayes.

This proposal was discussed at the November 6th and December 4th meetings of the Land Use, Housing, & Economic Development committee. At the December 4th meeting of the policy committee, the proposal was advanced as amended with a positive recommendation: M/S/C (Robinson/Harrison)

Vote: Ayes – Robinson, Harrison, Humbert; Noes – None; Abstain – None.

BACKGROUND

Small, locally owned businesses are an integral part of the City of Berkeley, contributing to its lively, eclectic atmosphere and its economic development. As the city has evolved, so too has the environment for small businesses. Across Berkeley's residential

neighborhoods, there are sites, often on corners and at intersections in neighborhoods, that once hosted commercial activities on parcels where such commercial activities would no longer be legal. While some remain, many have been converted into residences.

Starting a small business can be rewarding, but there are barriers to entry for aspiring business owners who do not have the capital to start their own businesses in our current environment. Opening a small business can require heavy upfront costs and risks — especially given the cost of renting and furnishing a traditional commercial space. Small business owners often face significant risks when starting their businesses, as they may need to rely on personal savings or loans, or even use their homes as collateral to cover the upfront costs of starting a business.

Changes to allow neighborhood-scale commercial uses in residential zones would enable Berkeley residents to create new and more affordable commercial spaces, increasing economic diversity, walkability, and neighborhood vitality. Allowing residents to create new spaces for micro businesses within residential spaces like garages will allow more people to contribute to the economic growth and diversity of the City and create opportunities for businesses that would otherwise be economically infeasible in traditional commercial spaces.

This referral contemplates exploring zoning changes that would enable property owners to reactivate formerly commercial spaces in neighborhoods for active commercial uses or to enable new neighborhood-scale commercial uses in residential areas. Nothing in this referral shall be interpreted to pre-determine the level of permitting necessary for any proposed improvements or for any particular use type.

Put simply, this referral seeks to *legalize neighborhood corner stores*, and similar gentle commercial uses.

One Potential Framework: “Accessory Commercial Units”

In some localities where these sorts of reforms to legalize neighborhood-scale commercial uses have been explored, advocates and policymakers have proposed the development of “Accessory Commercial Units,” or ACUs. ACUs are likened to the business equivalent of Accessory Dwelling Units (ADUs) and are commercial spaces on residential property for a small business.¹

The City of Raleigh, North Carolina recently legalized ACUs. The City approved a zoning change in 2022 to allow residents who live in neighborhoods currently zoned exclusively for residential uses to start a business on their property. The zoning change makes it so residents no longer have to first go to the Board of Adjustment (the equivalent of our Zoning Adjustments Board) to obtain a special use permit to create an ACU and instead require a city staff-issued permit as long as the guidelines are met.

¹Scott Beyer, “The Case for More Backyard Bodegas and Sidewalk Salons,” *Governing*, March 9, 2022, <https://www.governing.com/community/the-case-for-more-backyard-bodegas-and-sidewalk-salons>.

Such guidelines are constraints on the type of business, operating hours, and square footage, among others. Examples of approved ACUs in Raleigh are hair salons, music studios, health clubs, eating establishments, and more.² The city council cited climate-related goals and reducing car-dependency as a primary motivation for approving these changes to make it easier for property owners to open a small business in their home.³

Similarly, ACUs are permitted in Pomona, California under its proposed new zoning ordinance, which provides guidelines for owners of single-family homes to convert their garages into ACUs.⁴ The ordinance provides constraints on the type of business, noise and odors, and who can operate it; only owners of the residential property may operate an ACU on their property. This approach has some drawbacks, however, as it limits potential occupants substantially and may reduce the total number of ACUs built. Nonetheless, legalizing ACUs will make neighborhoods more sustainable and vibrant in Pomona and represents a huge step forward.

Advocates from Portland, Oregon are leading the way in trying to re-introduce retail into residential neighborhoods. Specifically, the advocacy group Portland: Neighbors Welcome in the City of Portland, Oregon is seeking to legalize corner stores (ACUs) citywide.⁵

In developing policy options to permit neighborhood-scale commercial uses in residential zones, staff should consider the benefits and drawbacks of practices in other jurisdictions, such as creating a pathway for permitting neighborhood commercial uses as “accessory commercial units.”

CURRENT SITUATION AND ITS EFFECTS

As commercial rents in the City of Berkeley increase, it becomes more and more difficult for small business owners to pay for their commercial spaces. Increasingly, businesses that can afford to do business here will be more likely to be corporate chains, crowding out small businesses.

Making it easier to use residential spaces for non-disruptive, neighborhood-scale commercial uses would create new opportunities to generate intergenerational wealth for people of color, addressing systemic wealth inequities. In the Bay Area, only 29% of businesses are owned by people of color.⁶ Small businesses in the Bay Area have struggled during the COVID-19 pandemic, especially POC-owned small businesses. The impacts of the pandemic have helped spotlight the systemic racism and wealth

² Anna Johnson, “Raleigh Could Allow Small Businesses Back into Neighborhoods. How to Weigh In,” Raleigh News & Observer, November 12, 2021, <https://www.newsobserver.com/news/local/counties/wake-county/article255732896.html>.

³ Anna Johnson, “Raleigh City Council Makes It Easier to Bring Some Businesses into Neighborhoods,” Raleigh News & Observer, June 9, 2022, <https://www.newsobserver.com/news/local/counties/wake-county/article262258662.html>.

⁴ “City of Pomona Zoning and Development Code Draft,” July 24, 2023, <https://www.pomonaca.gov/home/showpublisheddocument/5714/638260497917530000>.

⁵ “Inner Eastside for All,” Portland: Neighbors Welcome, accessed November 30, 2023, <https://portlandneighborswelcome.org/inner-eastside-for-all>.

⁶ PR Newswire, “People of Color Small Businesses More Vulnerable to COVID-19 Impacts Due to Historic, Ongoing Systemic Inequities,” January 27, 2022, <https://www.prnewswire.com/news-releases/people-of-color-small-businesses-more-vulnerable-to-covid-19-impacts-due-to-historic-ongoing-systemic-inequities-301468964.html>.

inequality in the region. We can help address this through policy reforms that create economic opportunity for those who have been left behind by the market.

The new work-from-home reality presents an opportunity for neighborhood-scale commercial spaces to thrive. Many Berkeley residents remain in their homes throughout much of the week, working from home. 35 percent of Bay Area residents still work from home, one of the highest rates in the country.⁷ Residents should be given the option to be able to walk to a neighborhood grocery to buy a few ingredients for lunch or to walk to a neighborhood coffee shop to work in a distraction-free environment for the afternoon. These objectives can be achieved in a way that complements, not detracts from, neighborhood character.

Berkeley's neighborhoods supported neighborhood commercial units in the past—and they still support a select few grandfathered units that still remain, such as the neighborhood retail space shown below. As Berkeley's neighborhoods densify and more people continue working from home, the demand for nearby walkable access to groceries, coffee shops, daycares, bike repair shops, and other amenities will only continue to grow.

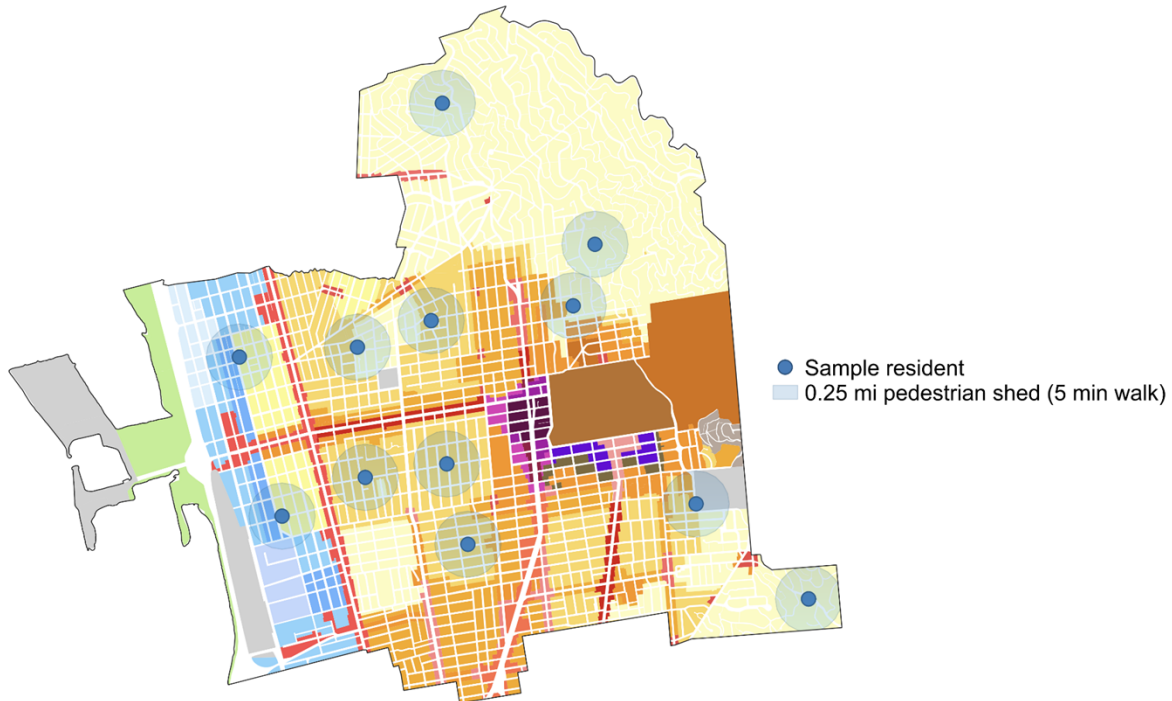


Many grandfathered neighborhood commercial spaces, like this one at Bancroft Way and Roosevelt Avenue, already thrive in Berkeley's neighborhoods and harness the City's historic resources to increase livability and economic opportunity. (Photo: Sam Greenberg)

Previously, there were numerous corner storefronts throughout residential neighborhoods in Berkeley that made it easier for many residents to get their needs met by walking rather than driving. But rezonings over the years changed the zoning of many neighborhood parcels that previously permitted small retail, prohibiting commercial activity. While existing shops were grandfathered in, many have since been converted to residential units; when storefronts closed, many building owners converted them into apartments. Once these commercial units were converted into apartments, they lost their grandfathered status, and it has become impossible for them to be converted back to commercial uses.

⁷"The Number of People Primarily Working From Home Tripled Between 2019 and 2021," US Census Bureau, September 15, 2022, <https://www.census.gov/newsroom/press-releases/2022/people-working-from-home.html>.

Reactivating previous neighborhood commercial units and creating opportunities for new ones would harness Berkeley's historical resources to increase livability for residents. These resources include our walkable urban fabric and residential buildings that previously included commercial spaces. Berkeley has a relatively dense and walkable street grid with an abundance of residential lots that used to accommodate commercial activity. Neighborhood commercial units would blend right into their neighborhoods and harness our historical resources, not compromise them. And notably — there may be meaningful grant opportunities available to proposals that seek to renovate and revive historic properties and reintroduce previously existing uses.



Map demonstrating how little access many Berkeley residents have to commercial zones within easy walking distance. Each dot represents a sample resident who does not live within a 5 minute walking distance of a commercial-zoned parcel. Each shaded blue circle represents their “pedestrian shed” – or the area that is walkable within 5 minutes at an average walking pace. (Map: Sam Greenberg)

For residents who currently live in neighborhoods without walkable access to groceries and other amenities, neighborhood-scale commercial uses can make it possible and safer for residents to meet daily needs without walking across a major arterial or relying on vehicle access. And further, there may be placemaking and livability benefits to enabling neighborhood-scale commercial uses particularly around city parks.

Beyond increasing the accessibility of shops to local residents, neighborhood commercial units would create new gathering spaces for neighbors. Many Berkeley neighborhoods—especially those in lower income areas including South and West Berkeley—have very few parks. Cafes and similar establishments serve as “third spaces,” or places outside of home or work for friends, colleagues, and acquaintances to meet. They add vibrance to neighborhoods and bring pedestrian activity during the

day. Increased pedestrian foot traffic and street lighting⁸ from neighborhood retail can improve public safety⁹ and health outcomes.¹⁰

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Under existing law, residents may set up a “home occupation” (HO) registered to their home address. There are three different classes of HOs – each with different intensities of use and different permitting requirements. Some HOs can be set up with a Zoning Certificate or AUP, while others require a public hearing.¹¹ In 2021, HO regulations were amended to allow HOs as an incidental use within a Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room.¹² However, the relatively strict requirements on HOs prevent them from enabling the sorts of vibrant neighborhood-scale commercial uses like cafes that this referral seeks to address.

Additional policy changes could build on successful COVID-era policies to allow residents the freedom to run businesses from their homes without disrupting the surrounding neighborhood. While existing law does create some narrow opportunities for residents to run businesses out of their homes, it is too restrictive to allow for the light retail and cafe uses that this item proposes, and which previously have existed in Berkeley’s neighborhoods.

Berkeley already permits general retail in some residential districts — R-4, R-5, R-S, and R-SMU — with a public hearing,¹³ and some general retail is permitted with an AUP in the MU-R district.¹⁴ However, the general retail uses permitted in MU-R and MU-LI districts are arbitrarily narrow and do not fully achieve the goals of this legislation. In both districts, general retail uses permitted with an AUP are food product stores and building materials and garden supply stores. Arbitrarily, arts and crafts supplies stores are also permitted in the MU-R zone, but not MU-LI. In other words, existing law permits general retail in some narrow cases but is too restrictive to allow for the economic opportunity and neighborhood benefits provided by broader adoption of commercial uses in residential zones.

⁸ Park, Y. & Garcia, M. (2020) Pedestrian safety perception and urban street settings, *International Journal of Sustainable Transportation*, 14:11, 860-871, DOI: [10.1080/15568318.2019.1641577](https://doi.org/10.1080/15568318.2019.1641577)

⁹ Rosenthal, S. & Urrego, J. (2021). Eyes on the street, spatial concentration of retail activity and crime. Working Paper. Syracuse University.

¹⁰ Zandieh, R., et al. (2016). Older Adults’ Outdoor Walking: Inequalities in Neighbourhood Safety, Pedestrian Infrastructure and Aesthetics. *International Journal of Environmental Research and Public Health*. 13(12):1179. <https://doi.org/10.3390/>

¹¹ “Home Occupations Frequently Asked Questions” (City of Berkeley, March 2021), https://berkeleyca.gov/sites/default/files/2022-02/HO_FAQ_Process_Flow_Charts_PDF_Procedures.pdf.

¹² Home Occupations Ordinance (City of Berkeley, 2021), <https://records.cityofberkeley.info/PublicAccess/api/Document/AVnK5eEpL2LZwSwhrcJ9IO29fFzYa%C3%89GoZdF08nKHTgetchzTofux68m%C3%81k3PHD4iWqhedYtbclWv7lv4PKfR6GaU%3D/>.

¹³ “Title 23 Div. 2, Zoning Districts Ch. 23.202, Residential Districts” (City of Berkeley, n.d.), <https://berkeley.municipal.codes/BMC/23.202.040>.

¹⁴ “Title 23 Div. 2, Zoning Districts Ch. 23.206, Manufacturing Districts” (City of Berkeley, n.d.), <https://berkeley.municipal.codes/BMC/23.206.090>.

Outreach and analysis to inform any zoning changes to permit neighborhood-scale retail uses ought to include studying the market demand for new neighborhood-scale commercial units. This could include surveying small business owners of current commercial uses in neighborhoods to understand their needs and surveying participants of the home occupations program. One can theorize that some residents may have been interested in the home occupations program, but did not follow through with becoming permitted if they decided that their dream business was beyond the scope of the existing HO process.

FISCAL IMPACTS

Costs include staff time for outreach, analysis, and implementation. Staff and the Planning Commission should consider whether an Environmental Impact Report (EIR) must be conducted to effectuate any associated zoning changes. If so, costs would include any environmental review.

Implementation of neighborhood-scale commercial zoning reforms could increase sales taxes and permit revenue.

ENVIRONMENTAL SUSTAINABILITY

By providing access for more commercial amenities within walking distance from residents, many vehicle trips can be eliminated. Having more walkable communities contributes to encouraging people to prefer alternative forms of transportation that do not involve an automobile, reducing greenhouse gas emissions. And further, small businesses are more likely than large corporations to be motivated to maintain environmental sustainability.¹⁵

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¹⁵ Corporations Boast, But Small Businesses Are Key To Cleaner Environment - Global Trade Magazine. <https://www.globaltrademag.com/corporations-boast-but-small-businesses-are-key-to-cleaner-environment/>. Accessed 15 Feb. 2023.

