



CONSENT CALENDAR  
July 29, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Berkeley Nightlife Council

RECOMMENDATION

Adopt a resolution to form the Berkeley City Council Nightlife Sub-Committee, convened by the District 2 council office to return recommendations for the formation, structure, and scope of operation of a Berkeley Nightlife Council (Night Council) to support nighttime economic activity, cultural programming, and community safety in city commercial districts.

POLICY COMMITTEE RECOMMENDATION

On June 10, 2025, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Bartlett/Lunaparra) to send the item to the City Council with a qualified positive recommendation that Council adopt the item with the caveat that the City Attorney’s Office review the ad-hoc committee for Brown Act implications. Vote: All Ayes.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is home to several commercial districts, including but not limited to Gilman, San Pablo, The Lorin District, Downtown, North Shattuck, Telegraph, and Elmwood. Berkeley’s commercial districts host a variety of economic activities traditionally associated with nightlife, ranging from hospitality to food and beverage, arts, entertainment, and gaming, as well as activities less associated with but compatible with nightlife, such as health and fitness.

***Occupancy Rate and Sales Tax Revenue in Hospitality and Food and Beverages Sectors***



Berkeley's hotels enjoy a higher occupancy rate than other Bay Area cities. There are 2.4 million overnight visitors, spending \$18.7m. In 2024, the city's average nightly hotel occupancy increased to 71%, up from 70% the year prior, but still below the pre-pandemic average occupancy rates, exceeding 80%.

In the second quarter of 2024, the City of Berkeley saw a 28.4% increase in sales tax revenue over the three previous quarters, versus decreases of 13.7% and 1.4% reported by Alameda County and the State of California, respectively. The food and beverage sector was the second largest contributor, representing 37% of sales tax revenue, behind retail at 45%.

### *Commercial District Vacancy Rates*

The Office of Economic Development's 2024 Economic Dashboard reports a year-over-year reduction in the ground floor vacancy rate from 15.5% to 7.1% in the San Pablo Avenue commercial district, from 17.7% to 7.7% on University Avenue, and from 19.2% to 8.9% in South Berkeley. Conversely, commercial vacancy rates have increased from 10.8% to 10.9% in the Downtown, from 1.9% to 2.0% along North Shattuck, from 9.3% to 9.9% along Telegraph, and from 6.2% to 6.9% in the Elmwood.

### *Commercial Districts with Concentration of Nightlife*

#### **Downtown**

Downtown Berkeley serves as the city's core commercial district, a vibrant critical nexus for the social and professional lives of residents, students, workers, and visitors. Shattuck Square is the city's primary transit hub, connecting AC Transit lines 6,7,18,51B, 79, 800, 851, F, and BART's Red and Orange lines. The Downtown is home to the Berkeley Public Library's Central Branch, the Arts District, and is situated between Berkeley High, Berkeley City College, and UC Berkeley, and hosts the densest concentration of multifamily residential communities and the largest number of restaurants in the city. In the Berkeley Police Department's 2024 Annual Crime Report, Council District 4 logged the highest count for calls for service, with the Downtown commercial district generating a high volume.



Arts and entertainment uses in the Downtown account for 15.3 % of total ground floor commercial space versus 4.8%. As of 2024's fourth quarter, commercial vacancies increased 0.01% over the previous year, and food and beverage sales tax revenue dropped slightly from \$1.17m to \$ 1.2m.

The nightlife culture of the Downtown and Arts District is emblemized by renowned businesses and venues such as The Berkeley Repertory Theater, UC Theater, Freight and Salvage, Revival Kitchen, Pizza de Laura, Jupiter, East Bay Spice Company, and Study Hall at the Residence Inn.

### **Elmwood**

The Elmwood is a compact, walkable neighborhood serving a commercial district serviced by the 51B bus line, which sees some of the AC Transit's highest ridership routes. This district also features Berkeley's only remaining movie house, Rialto Cinema's Elmwood.

Food and beverage services account for 29% of the district's ground-floor uses and generated \$229,309 in sales tax revenue, up from a low of \$140,812 in 2021. As of 2024's fourth quarter, Elmwood's commercial vacancy rate was 6.9%.

Night in the Elmwood is enlivened by the Elwood Cinema, La Mediteranee, Five Tacos and Five Beers, and Vietnamese street food vendors.

### ***North Shattuck***

North Shattuck is one of the city's oldest commercial districts. Walkable and neighborhood-serving, North Shattuck is a global dining destination well known for lauded establishments including Cheeseboard and Chez Panisse.



Food and beverage sector sales tax revenues rose to \$588,817 in 2024, up from a 2021 low of \$298,196.

North Shattuck's evening activity is bestudded with gems such as Saul's, Via Del Corso, Da Lian, Farmhouse Thai, and Vintage Berkeley Wine Shop in the Vine Street Pumping Plant.

### *San Pablo and West Berkeley*

Berkeley's largest commercial corridor, served by AC Transit's 72,72M,72R bus lines, San Pablo Avenue serves as a regional destination for specialized commercial uses and features many neighborhood-serving establishments spanning the length of the city. Despite featuring smaller percentages of food and beverage services (13.7%) than the city, San Pablo's bars and restaurants comprise the gem and beating heart of the social and nightlife of West Berkeley's diverse neighborhoods. West Berkeley has two nascent merchant associations: the Gilman District and the International Market Place, and the established University Avenue Association.

San Pablo's commercial vacancy rate decreased to 7.1% in 2024 from 15.6% the previous year. Retail sales comprise the largest source of tax revenue, increasing to \$772,703 in 2024, generating foot traffic to nearby businesses.

West Berkeley's nightlife culture is defined by businesses and venues including: Hammerling Wines, the Gilman Brewery, Funky Elephant Thai, Babette, La Marcha, El Patio, and Acme Bar.

### *Telegraph*

Telegraph Ave linking UC Berkeley's Southside neighborhood to Oakland's Uptown and Temescal and served by AC Transit's 51B and 6 bus lines as well as the line 851 Nightbus and Bear Transit's P Line, is one of Berkeley's most rapidly transforming commercial districts. The Telegraph is home to an eclectic and vibrant mix of restaurants, bars, event spaces, and entertainment venues, serving both the campus and city communities.



32% of ground-floor square footage is host to food and beverage services compared to 12.5% citywide. Sales tax revenue collected from this sector increased to \$618,773 in 2024.

Businesses and venues comprising Southside and Telegraph’s nightlife culture include: Raleigh’s, Cali Sports Bar, Henry’s at the Graduate, Games of Berkeley, and Zellerbach Hall on the UC Berkeley campus.

### ***Zoning Amendments for Berkeley Businesses***

On March 12 2024, the City Council adopted Ordinance No. 7,898-N-S. amending Berkeley Municipal Code Title 23 to streamline and clarify the permitting process for businesses in C-Prefixed (commercial districts), select M-Prefixed (manufacturing districts), R-BMU (residential BART mixed-use), and R-SMU (residential Southside mixed-use) zoning districts.

The ordinance amendments implemented changes to the permitting process: reducing the level of permitting discretion for group class instruction and clarifying the definitions of “Dance/Excercise/Martial Arts/Music Studio”, “Group Class Instruction,” and “Gyms and Health Clubs”; revising permit requirements and providing clear performance standards for restaurants that wish to serve Incidental Distilled Spirits at a Food Service Establishment; permitting stand-alone Beer and Wine Sales and Service with an administrative use permit (AUP), subject to performance standards, in all commercial zoning districts; modifying the special use standards related to Alcohol Service, Live Entertainment, and Hours of Operation in select C-prefixed and M-prefixed districts; removing the permit requirements to change a use in commercial districts, thereby reducing permitting time and costs for small businesses getting established in existing commercial spaces; reducing the level of permitting discretion for Office, Business and Professional; Art/Craft Studio; and Pet Stores in select C-prefixed districts; Reducing levels of permitting discretion for food service in commercial and select manufacturing districts and in R-SMU and R-BMU zoning districts, as long as alcohol service is not included, removing restrictions on rentals of food service establishments to third parties, and on outdoor and seated food service with alcohol in select C and M prefixed districts and removing quotas on food service in the C-E (Elmwood) district; and remove the prohibition on uses involving sale or distribution of paraphernalia in the C-T (Telegraph) district.



### *Continuing Berkeley's Economic Recovery*

Berkeley's hotel occupancy rate and food and beverage sales tax revenues indicate a positive economic recovery across districts containing a concentration of commercial uses associated with nightlife. Recent BMC amendments represent a historic opportunity to revitalize Berkeley's small business ecosystem, especially across industries operating in nightlife sectors. However, commercial vacancy rates in the downtown core and a high volume of calls for service underscore the challenges facing many downtowns in the Bay Area and beyond.

### FINANCIAL IMPLICATIONS

The sub-committee will convene to conduct its work utilizing the internal resources of the District 2 council office, requiring no additional funding and placing no additional fiscal strain on city resources.

### BACKGROUND

Night Councils function as collaborative night-time urban governance structures between municipal organizations, nightlife industry sector business leaders, and local communities to generate solutions to improve and support night-time economic activity, cultural programming, and public safety in commercial districts. Several global cities currently maintain active night councils with several governance structures.

### **International Models for Night-Time Governance**

New York City's Office of Nightlife was created via 2017 legislation and functions as a non-enforcement liaison between the city and the nightlife industry. Early actions taken by the office include a five-borough listening tour to establish a framework for the manage of challenges across the industry culminating in the formation of the office's four-pronged agenda: 1) supporting business development and recovery, 2) improving and addressing quality of life issues between venues and residents, 3) promoting safety, equity, and harm reduction, and 4) elevating and preserving nightlife culture.



Melbourne's nightlife scene is lauded for contributing immensely to the city's global reputation as one of the most liveable cities. The Melbourne Night-time Advisory Committee advises the city on economic recovery and designs programs to advance the city's night-time economic goals. Flash Forward, one of the Committee's programs, utilizes locally sourced public art installations to generate foot traffic in the city's unique and lesser-explored laneways and pedestrian streets containing shops, cafes, bars, and restaurants. Like Berkeley, Melbourne benefits from the knowledge partnerships fostered through its proximity to and cross-pollination with academic institutions. One such program borne from collaboration between the Night-Time Advisory Committee and the University of Melbourne's School of Design is Project Night Justice, an initiative to promote the safety of women-identified and LGBTQ+ community members.

Montreal 24/24 is a non-profit citizen-led organization that partners with Montreal's economic development agency and receives city funding to develop policy and support the nightlife industry community and night-time economy. The organization commissions research, provides workshops, plans a summit, conducts pilot projects, and runs a night council comprising twelve citizens with nightlife expertise, including artists, venue owners, public health professionals, and academics. Formed during the Pandemic, Melbourne's Night Council is composed of four committees: 1) Permanent spaces (venues, bars, clubs), 2) Temporary initiatives, festivals, and events, 3) Health, safety, inclusion, and diversity, and 4) Living at Night. The Committee receives input, issues recommendations on nightlife topics, and holds an annual Open Mic open to members of the Melbourne community to share their experiences and visions for nightlife. The Council also organizes a yearly summit called Montreal Au Sommet De La Nuit, attended by global leaders to discuss night-time governance and different global practices.

### **Potential Night-Time Governance Structure for the City of Berkeley**

Given the City of Berkeley's organic configuration of commercial neighbors and the characteristics of its night-time economy, its proximity to local academics institutions, and the operational capacity constraints of the city organization, a night governance model built on a synthesis of Melbourne's Night-Time Advisory Committee and Montreal 24/24's Night Council may benefit Berkeley's economic recover from COVID and further its Strategic Plan goal to *foster a dynamic, sustainable, and locally-based economy*.



### **Berkeley's Nightlife Ecosystem**

Berkeley has several key stakeholders, non-profits, and companion agencies, uniquely positioned to serve as strategic partners for a Night Council. This item proposes the formation of an ad-hoc advisory committee convened by the District 2 Council office and including the representative members from the following:

- Mayor of the City of Berkeley
- District 2 City Councilmember
- District 4 City Councilmember
- District 5 City Councilmember
- Visit Berkeley
- The LGBTQ+ Community
- The Berkeley Chamber of Commerce
- The Gilman District
- The International Market Place
- The Lorin District
- The Downtown Berkeley Association
- The Arts District
- The North Shattuck Business Improvement District
- The Telegraph Business Improvement District
- Office of Economic Development
- Berkeley Police Department Community Services Bureau

The ad-hoc committee will fulfill the ceremonial function of serving as an inaugural Night Council and shall meet quarterly for one year and return recommendations to the City Council for the permanent governance structure and organization of a formal Night Council.

### RATIONALE



Night Councils have played a major role in the economic recoveries of New York City, Montreal, and Melbourne through strategic collaborative thought-partnerships between cities, nightlife industries, and local communities. Berkeley's strong hotel occupancy rate and sales tax revenues, proximity to cultural and academic institutions, and global dining and arts destination status position the city to leverage its cultural and economic capital to accelerate economic recovery and revitalize our commercial sectors.

Berkeley benefits from an organic ecosystem of potential strategic partners. Before pursuing a permanent structure, stakeholders should be engaged by convening an ad hoc community to assess potential and optimal governance structures right-sized to the city's organizational capacity.

The Office of Economic Development's collaborative engagement with the Berkeley Startup Cluster has yielded fruitful policy results through the legislation of land use reform, leveraging Berkeley's innovation ecosystem. The Berkeley Nightlife Council has the potential to replicate this success via close thought partnership with the food and beverage, arts and entertainment, and hospitality sectors.

### Alternatives Considered

A recommendation proscribing a concrete structure had been considered. It is preferable to initiate this effort as an ad-hoc vehicle for stakeholder engagement and organization assessment.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

### CONTACT PERSON



Councilmember Terry Taplin, Council District 2 510-981-7120

Attachments:

1. Resolution Establishing the Berkeley City Council Nightlife Subcommittee. .
2. Office of Economic Development 2024 Commercial District Dashboard Presentation.
3. Office of Economic Development 2024 2024 Economic Dashboard Presentation
4. Planning and Development Zoning Amendment for Berkeley Businesses; Amending Berkeley Municipal Code Title 23 February 27, 2024 Staff Report.
5. 24-Hour Cities Network Governance Workshop Insight Report.

## **Resolution Establishing the Berkeley City Council Nightlife Sub-Committee**

WHEREAS, urban nightlife is generally associated with economic activity related to the hospitality, food and beverage, and arts and entertainment commercial sectors, and, more broadly, with health and wellness; and

WHEREAS, “Night Councils” are collaborative urban governance frameworks linking municipal organizations, nightlife industries, and local communities to foster strategic thought-partnerships to develop policy and issue recommendations in support of night-time economic activity, cultural programming, and public safety in commercial districts, and official and unofficial “Night Mayors” and “Night Commissioners” are social and cultural ambassadors to the wider community and active participants the culinary, artistic, cultural and social life of cities at night; and

WHEREAS, New York City’s Office of Nightlife, The Melbourne Night-Time Advisory Committee, and Montreal 24/24’s Night Council were initiated in response to the COVID Pandemic and were instrumental in the economic recovery of their respective cities; and

WHEREAS, the City of Berkeley hosts several commercial districts with concentrations of nightlife sectors, and Berkeley’s superior hotel occupancy rate and growing sales tax revenue generation continue to play a crucial role in the city’s economic recovery; and

WHEREAS, Berkeley’s Downtown commercial core continues to struggle with high rates of commercial vacancy having lost landmark institutions such as Regal’s United Artists Berkeley 7 theater, California Theater, and Shattuck Cinemas, yet benefits from proximity to the University of California at Berkeley, Berkeley City College, and is experiencing the highest growth of multifamily residential construction; and

WHEREAS, Berkeley remains a global destination for dining, arts, and culture, and increased foot traffic will bring vibrancy, safety, and vitality to its Downtown core and commercial and citywide commercial neighborhoods, increasing venues and expanding the city’s tax base,

THEREFORE BE IT RESOLVED, that the Mayor and the City Council of Berkeley establish the Berkeley City City Council Nightlife Sub-Committee to meet for one year and shall return to the City Council recommendations for the formation and organizational structure of a formal Berkeley Nightlife Council (Night Council); and

THEREFORE BE IT FURTHER RESOLVED, that the District 2 City Council office will convene the Nightlife Sub-Committee, which shall include the Mayor of the City of Berkeley and the City Council representatives of Districts 4 and 5, and shall invite representatives of the following to participate:

- Visit Berkeley
- The LBGT+ Community
- The Berkeley Chamber of Commerce

- The Gilman District
- The International Market Place
- The Lorin District
- The Downtown Berkeley Association
- The Arts District
- The North Shattuck Business Improvement District
- The Telegraph Business Improvement District
- The Office of Economic Development
- Berkeley Police Department Community Services Bureau

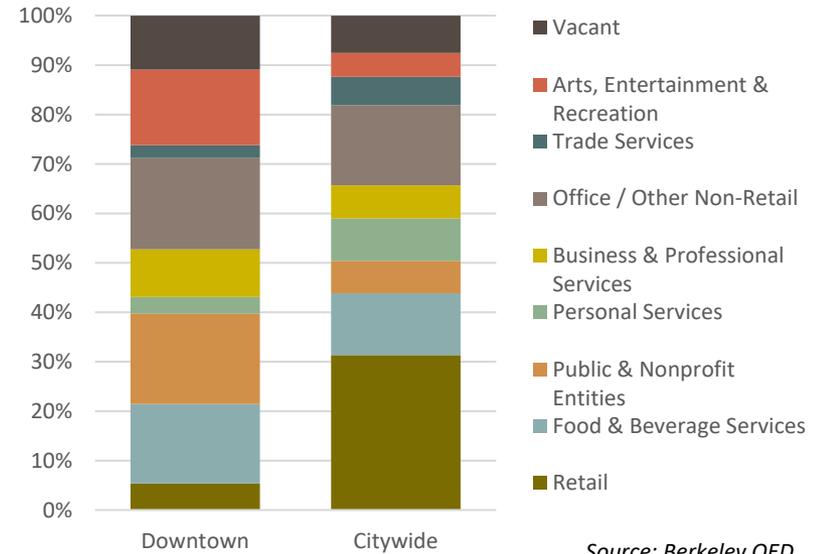
# Downtown: 2024 Snapshot



Downtown Berkeley serves as the City's core commercial district, meeting the daily needs of residents, students, workers, and visitors. The district benefits from a significant concentration of arts and entertainment uses, which occupy 15.3% of total ground floor commercial space in the district, compared to 4.8% citywide. As of Q4 2024, the vacancy rate in Downtown is 10.91%, an increase from 10.78% in 2023, and above the 9.9% seen during the first year of COVID (2020). Sales tax revenue generated by Food & Beverage services reached its nadir in 2021 (\$565,561), but has recently matched pre-COVID levels with \$1.17M generated in 2024 (a slight drop from \$1.2M in 2023).

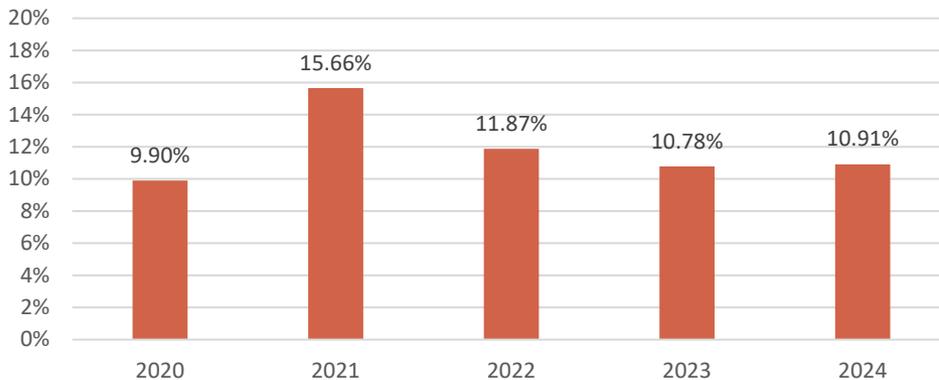


**Ground Floor Commercial Business Mix (by Square Footage), 2024 Q4**



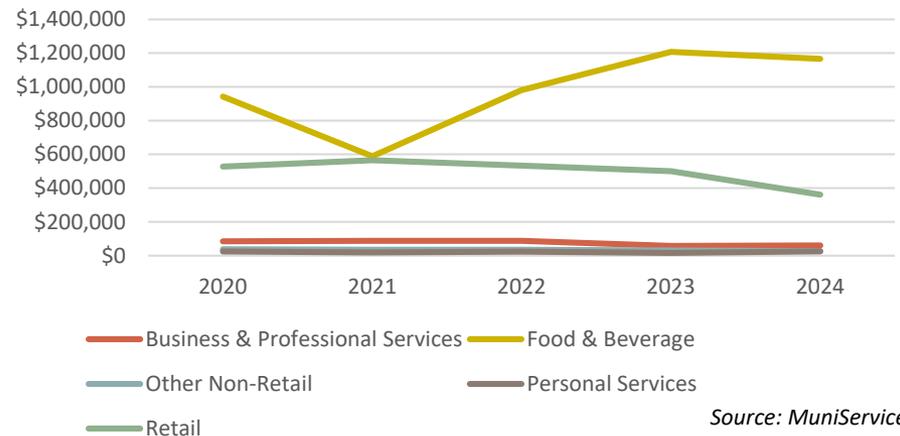
Source: Berkeley OED

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024**



Source: Berkeley OED

**Sales Tax Revenue by Sector, 2020-2024**



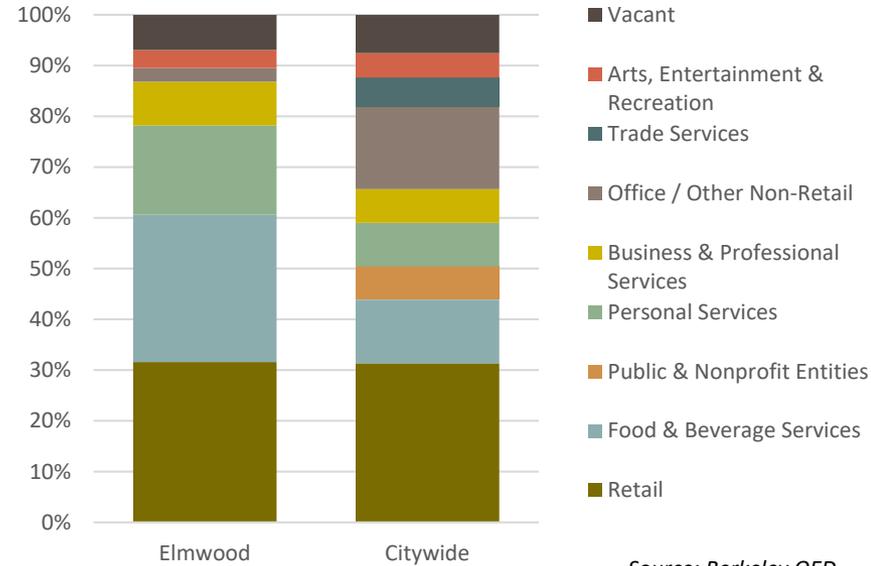
Source: MuniServices

The Elmwood is a compact three block commercial district along College Avenue near the Berkeley-Oakland border and the neighboring Rockridge shopping district. The Elmwood district is characterized by a high concentration (29%) of Food & Beverage services and Personal Services (17.6%), and is a walkable, neighborhood-serving commercial district. As of Q4 2024, the district's vacancy rate by square footage is 6.9%.

Sales tax collected from the Food and Beverage sector in the Elmwood increased in 2024 to \$229,309, from a low of \$140,812 in 2021. Sales tax collected from the Retail sector decreased slightly in 2024 to \$103,201, but remained above retail sales tax collected in 2021 (\$88,709) when the pandemic was in an acute phase.

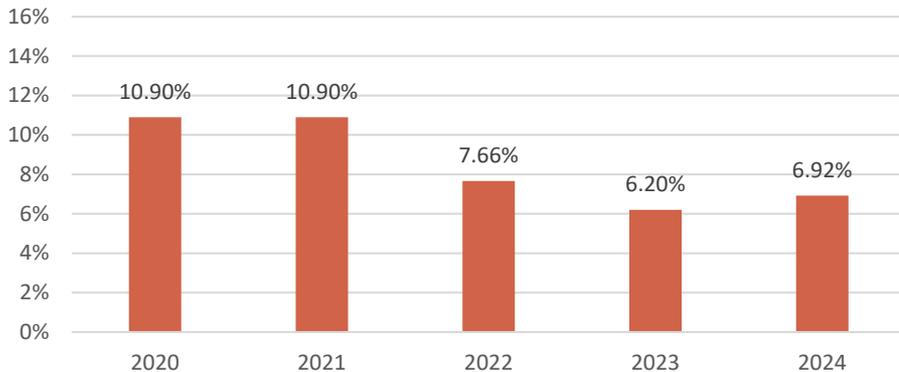


## Business Mix (by Square Footage), 2024 Q4



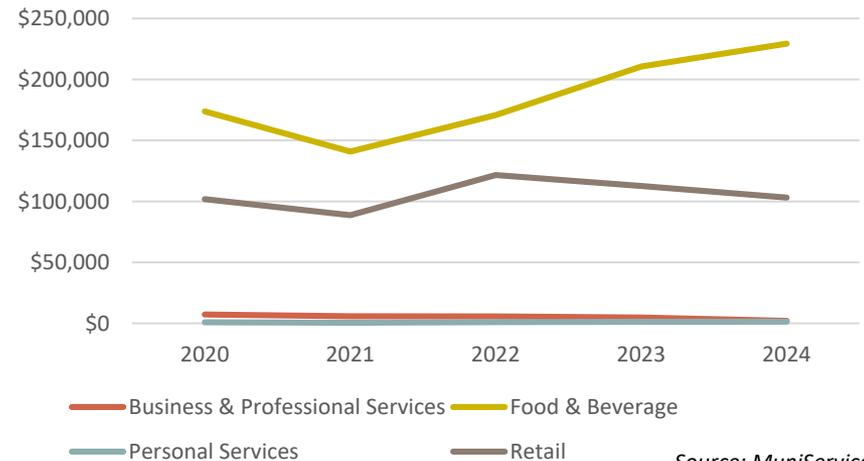
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024



Source: MuniServices

# North Shattuck: 2024 Snapshot

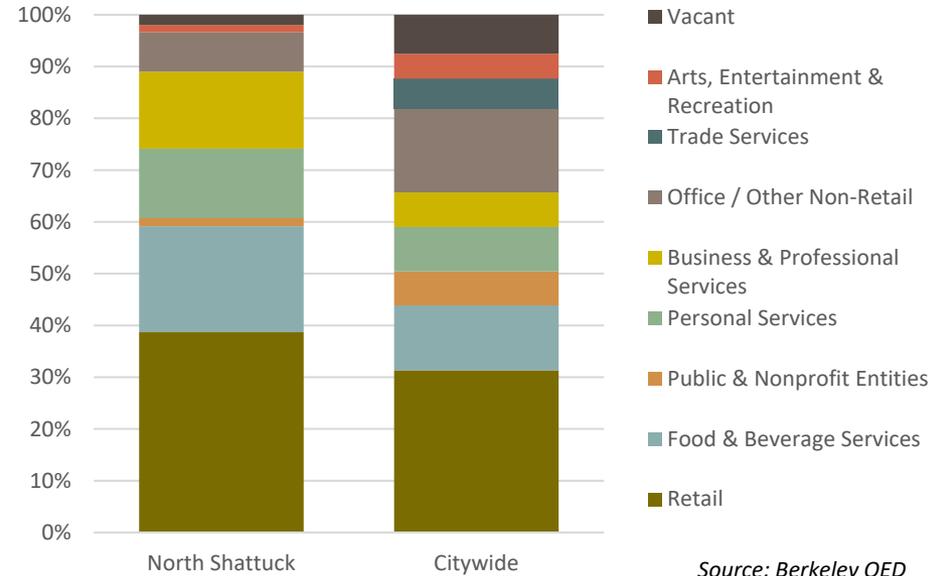


North Shattuck is one of Berkeley's oldest commercial districts, just north of Downtown. The district is characterized by a high concentration of well-known, long-standing, and celebrated restaurants, including Chez Panisse and the Cheeseboard. North Shattuck is both a walkable, neighborhood-serving commercial district as well as a global destination for food and dining. As of Q4 2024, the district's vacancy rate by square footage is 1.95%, on par with the 1.9% calculated in 2023 Q4.

Sales tax collected from the Food and Beverage sector in North Shattuck increased in 2024 to \$588,817 from its 2021 low (\$298,196), and sales tax collected from the retail sector increased slightly in 2024 to \$136,153 from \$134,219 collected in 2023.

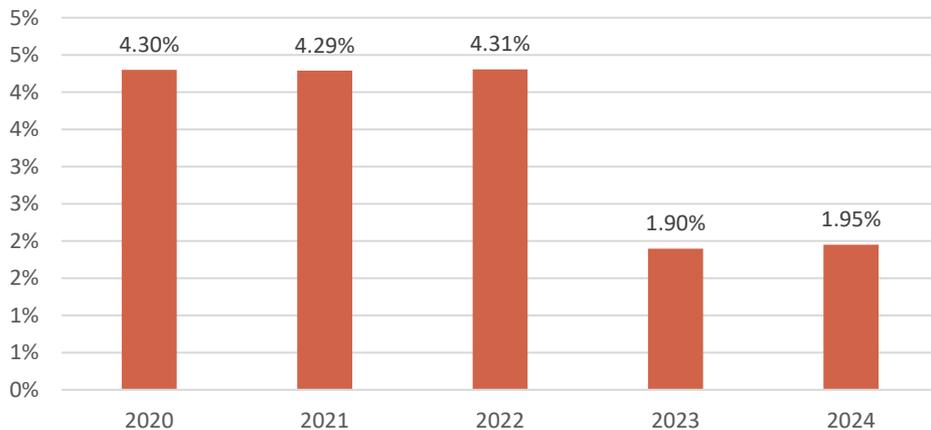


## Business Mix (by Square Footage), 2024 Q4



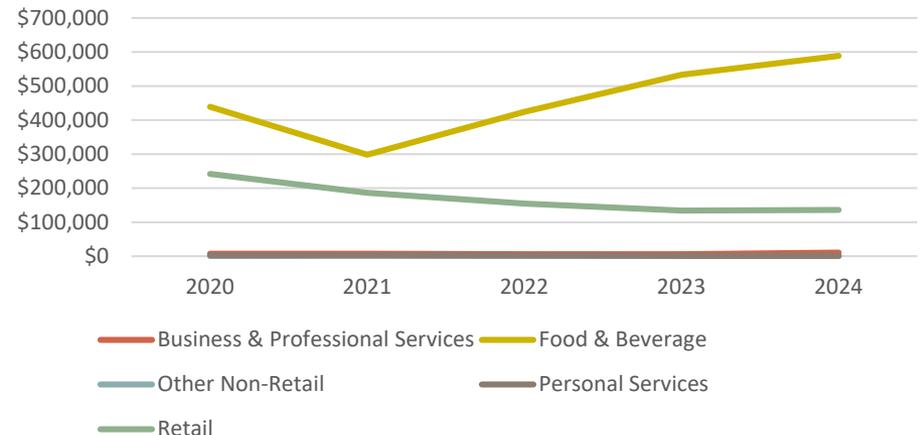
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024



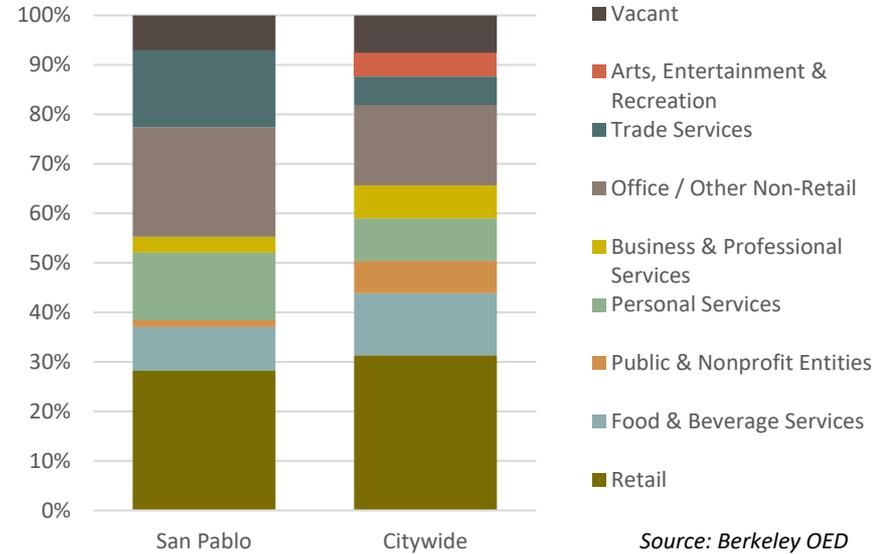
Source: MuniServices

San Pablo Avenue is Berkeley’s largest commercial corridor, running the entire north-south length of the City. San Pablo is characterized by a high concentration of Trade Services (15.5%), including automobile services.

San Pablo functions more as a regional destination for specific uses rather than a walkable, neighborhood-serving commercial district; as such, it features smaller percentages of Food & Beverage Services (8.9%) and a larger portion of Personal Services (13.7%) than the city as a whole. In 2024, the district’s vacancy rate by square footage is 7.1%, down from 15.6% in 2023. Retail Sales tax revenue collected in 2024 has increased to \$772,703 since 2023 (\$679,253) and continues to be the largest source of tax revenue for the area.

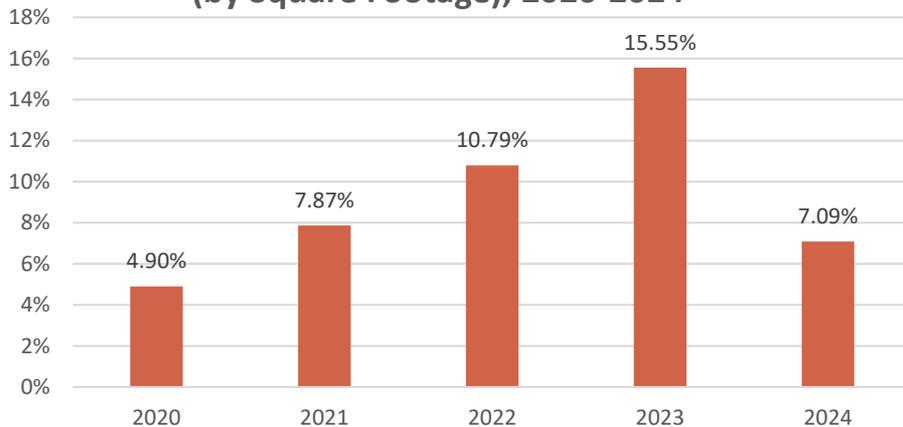


## Business Mix (by Square Footage), 2024 Q4



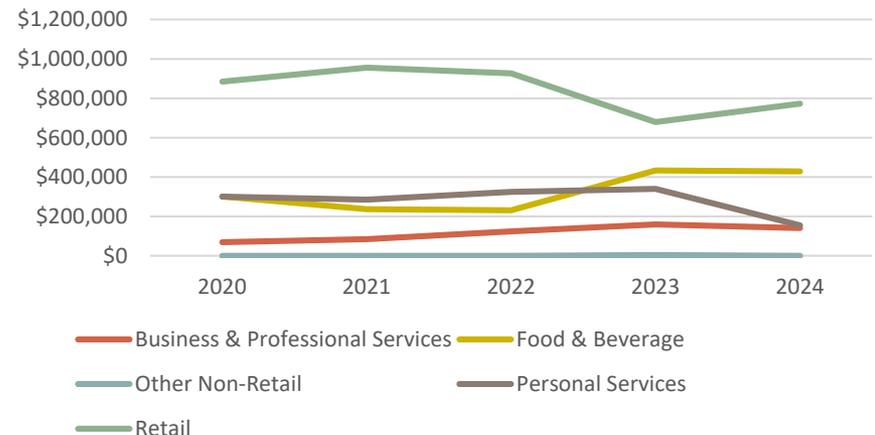
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024



Source: MuniServices



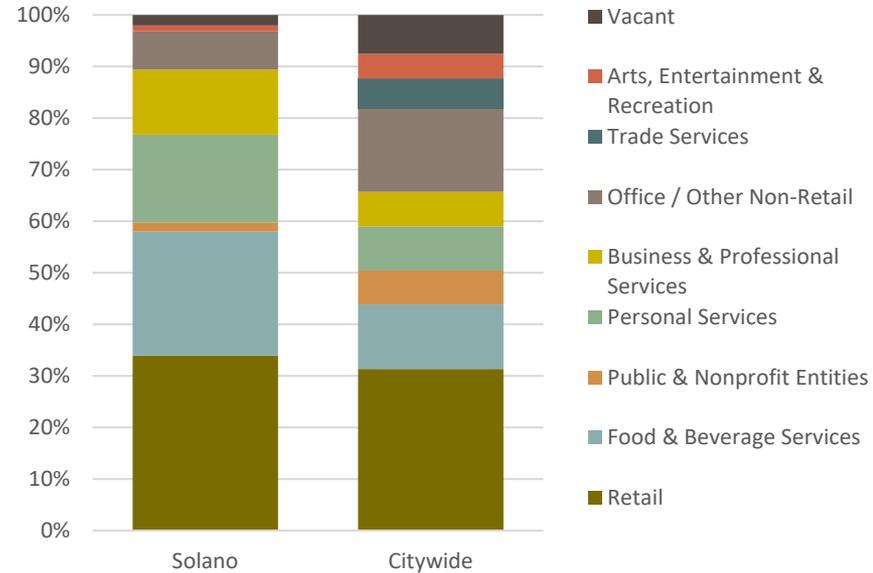
Solano is a small district in North Berkeley, with a total of 148 commercial spaces and approximately 189 thousand square feet of commercial space. It shares a border with Albany and is situated next to a large elementary school and an active neighborhood of single-family homes.

The former Oaks Theatre is now occupied by *The Oaks* climbing gym that opened in 2024. The district's vacancy rate by square footage is 2.1%, a slight decrease from 2023 (2.6%).



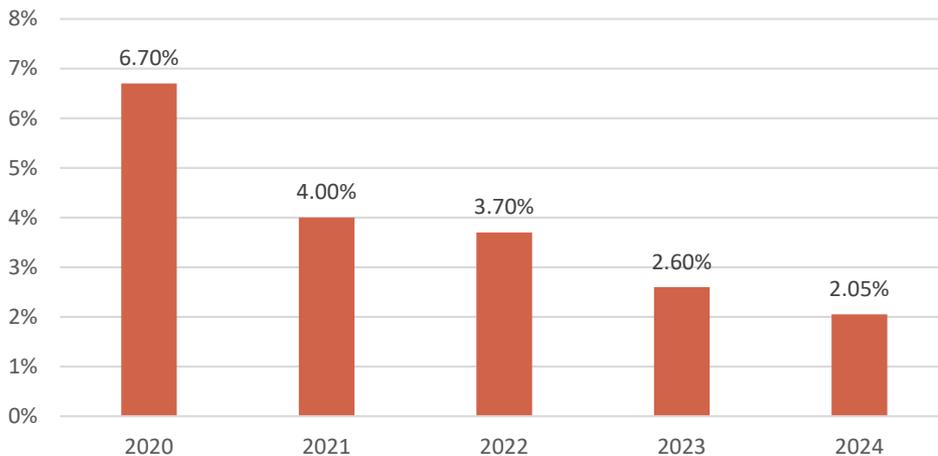
Sales tax collected from the Food and Beverage sector along Solano Avenue increased by \$3,084, from 2023 to 2024, and sales tax collected from the retail sector also increased from 2023, to \$114,635.

## Business Mix (by Square Footage), 2024 Q4



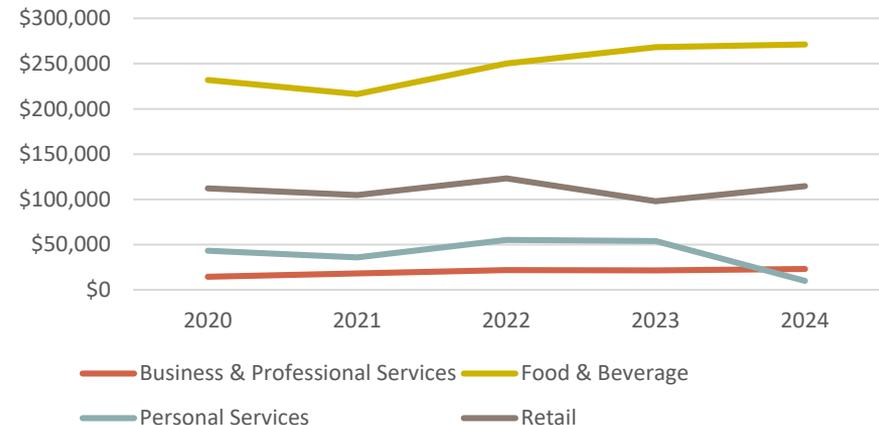
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024



Source: MuniServices

# South Berkeley: 2024 Snapshot



South Berkeley is a large district stretching over an area known for its cultural diversity and includes the Lorin District, the Sacramento Ave. corridor, and the South Shattuck area. South Berkeley includes car dealerships, which accrue retail sales tax revenue for the City.

The area features a high concentration of Personal Services businesses (15.9% vs. 8.6% citywide) but is under-served by Food & Beverage services, which account for only 5.2% of ground floor commercial space, as compared to 12.5% citywide. As of Q4 2024, the district's vacancy rate by square footage was 8.9%, a marked decrease from 2023 (19.3%).

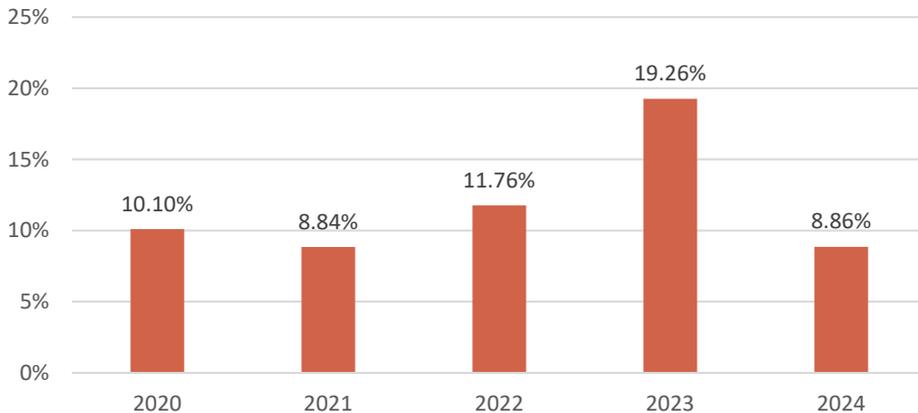


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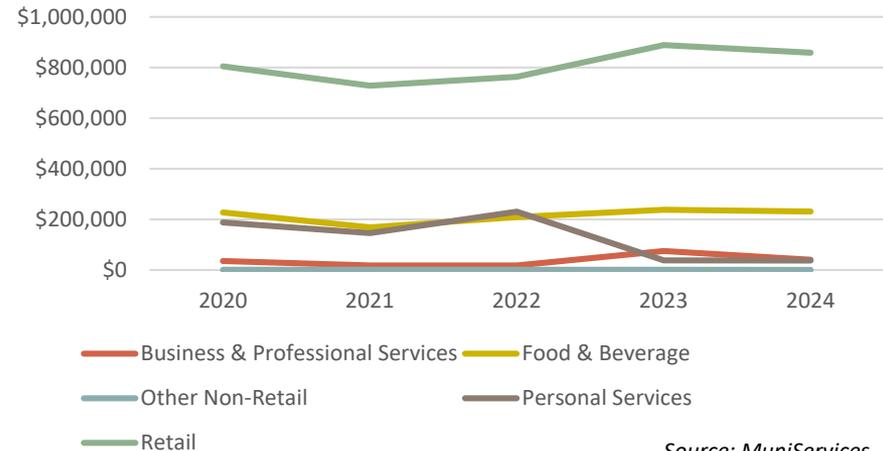
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



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## Sales Tax Revenue by Sector, 2020-2024



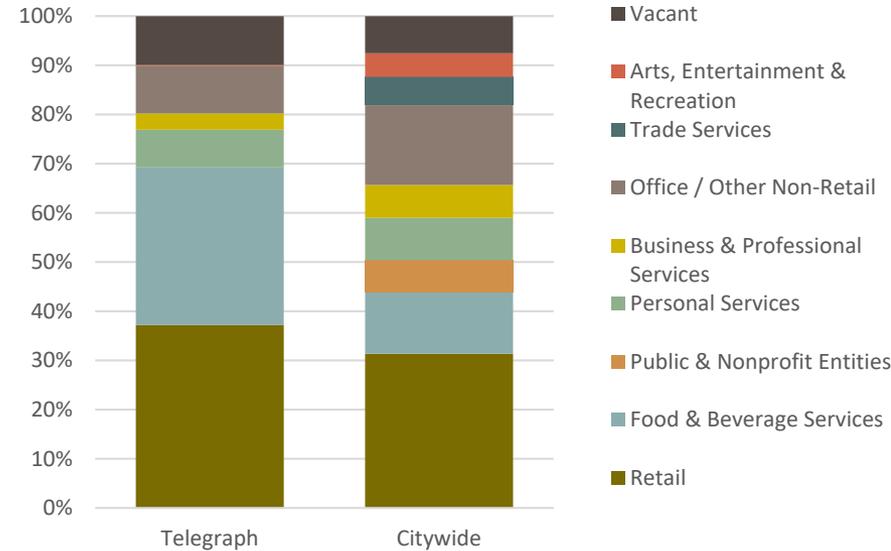
Source: MuniServices



The Telegraph district has undergone significant change with respect to its ground floor inventory over the past several years. Food & Beverage services have shown a dramatic increase in the last decade, with 32% of Food & Beverage services accounting for ground floor commercial space in the district, as compared to 12.5% citywide. Telegraph's ground floor inventory of retail accounts for 37.2% of the business mix, slightly more than the 31.3% observed citywide. As of Q4 2024, the district's ground floor commercial vacancy rate of 9.9%, was higher than 2023 (9.3%). Food & Beverage services outperform Retail with respect to sales tax collected; Food & Beverage collections increased to \$618,773 in 2024.

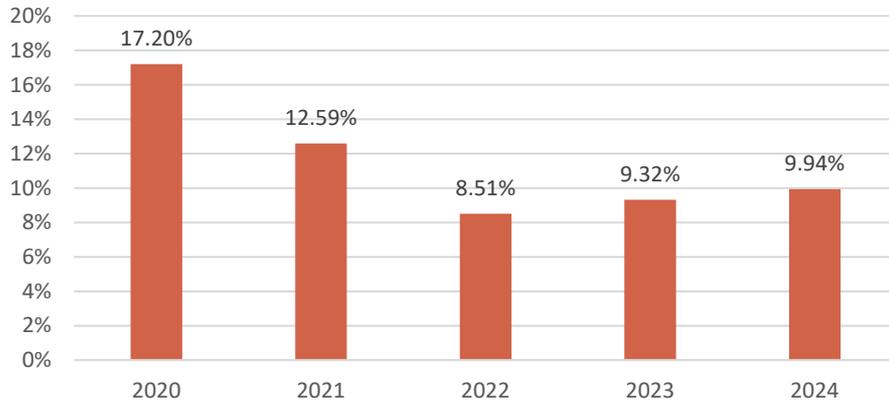


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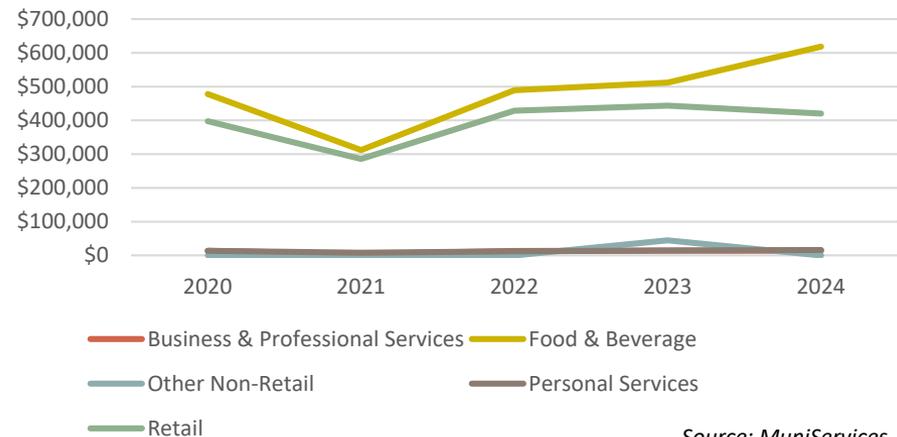
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024

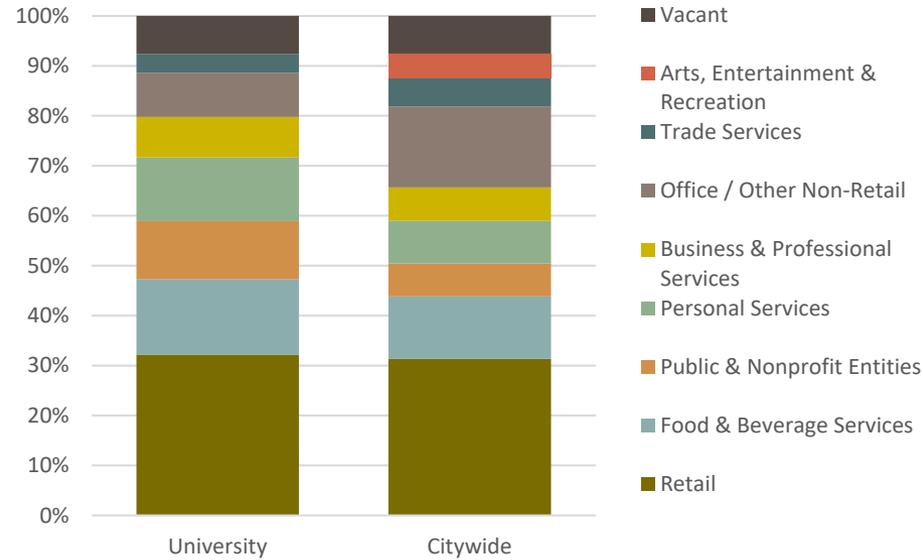


Source: MuniServices

University Avenue, from Martin Luther King Jr Way to the waterfront, spans many of the City's neighborhoods and serves as the gateway to the UC Berkeley Campus. Since 2019, Retail and Food & Beverage Services have generated the most sales tax revenue for the district. Retail sales tax collected in 2024 decreased slightly by \$14,117 from 2023, and sales tax from Food & Beverage stayed steady. The 2024 vacancy rate decreased year over year from 17.7% in 2023 to 7.7% in 2024; the lowest rate in five years.

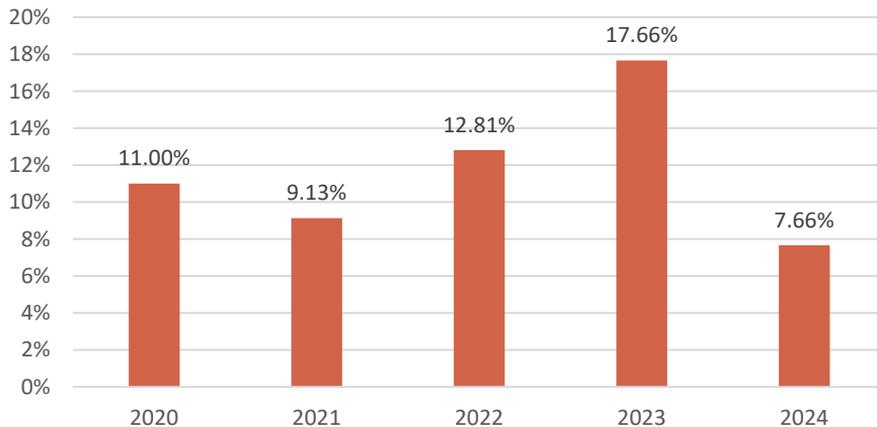


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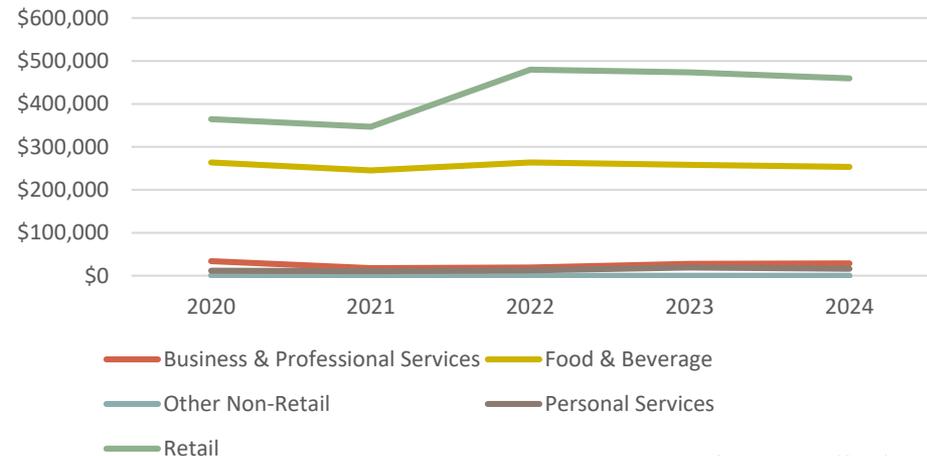
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024

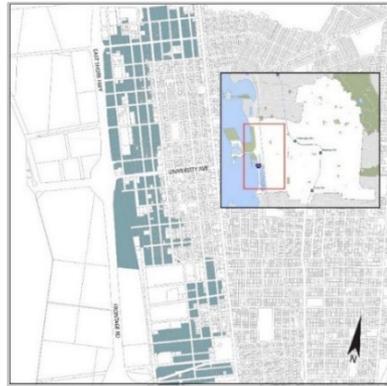


Source: MuniServices

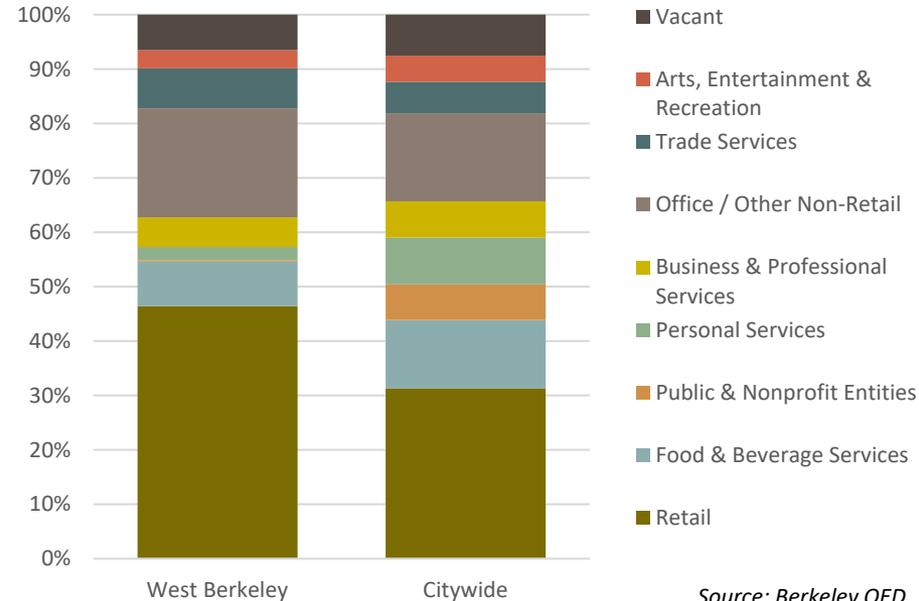
# West Berkeley: 2024 Snapshot



West Berkeley represents all commercial spaces west of San Pablo Avenue, including 4<sup>th</sup> Street and the Gilman District. There are a number of major, large-floor-plate retailers, and a dense cluster of home supplies and construction businesses. There is also a higher percentage of non-retail commercial uses, including manufacturing and warehousing. Retail accounts for 46.4% of ground floor commercial space in the district, as compared to 31.3% citywide. West Berkeley also has a smaller percentage of square footage devoted to Food and Beverage (8.2%) businesses than the citywide rate of 12.5%. The commercial vacancy rate in Q4 of 2024 is 6.5%, up from 2023's 2.1%. Sales tax revenue has decreased or stayed steady in this area in all categories including Retail where a sales tax revenue decrease of \$473,968 (-7.1%) YoY is observed.

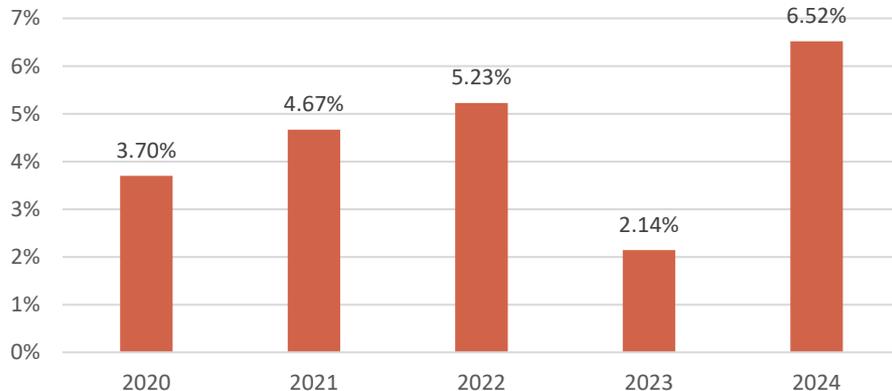


## Business Mix (by Square Footage), 2024 Q4



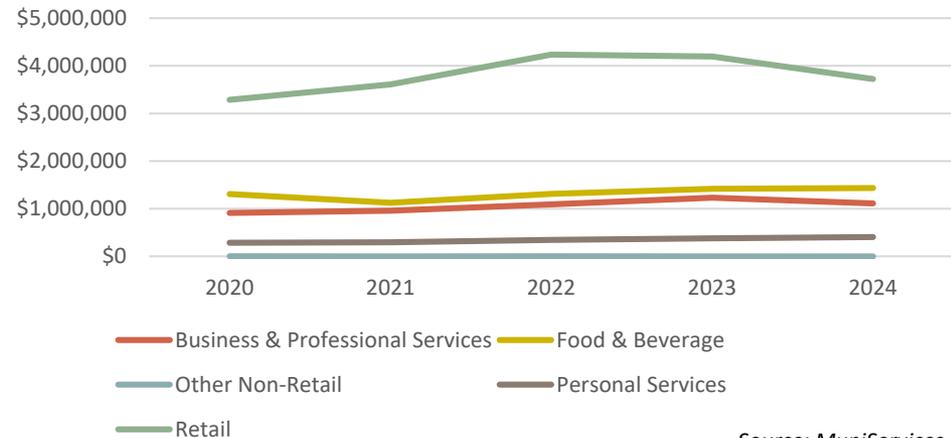
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2020-2024



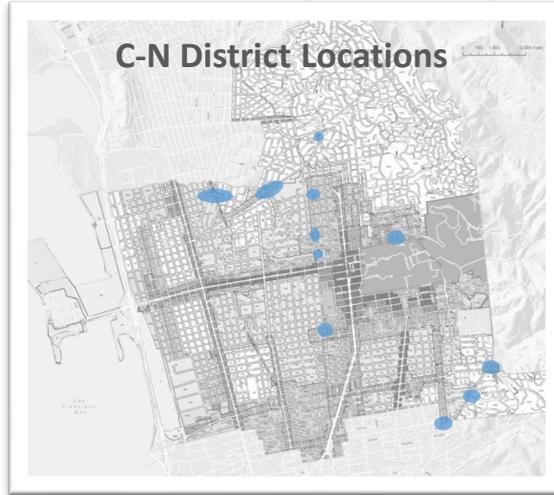
Source: MuniServices

# Neighborhood (C-N): 2024 Snapshot



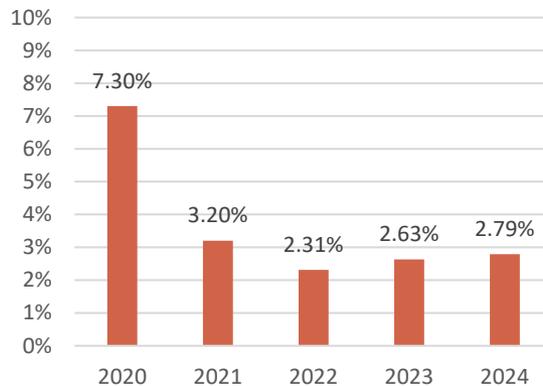
Across Berkeley there are **11** smaller commercial pockets, zoned as “C-N” or “Neighborhood Commercial.” These areas are one or two block collections of commercial enterprises distributed throughout Berkeley.

The “C-N” areas represent nearly 190 commercial spaces, and approximately 390K square feet of commercial space. The C-N areas collectively generate 2.4% of the city’s total sales tax. They also include a large number of Personal Services companies (32.8% by square footage, compared to 8.6% citywide) and Public and Non-Profit entities (24.6% compared to 6.6% citywide). The C-N vacancy rate is 2.8%. These areas include commercial nodes at the following intersections:



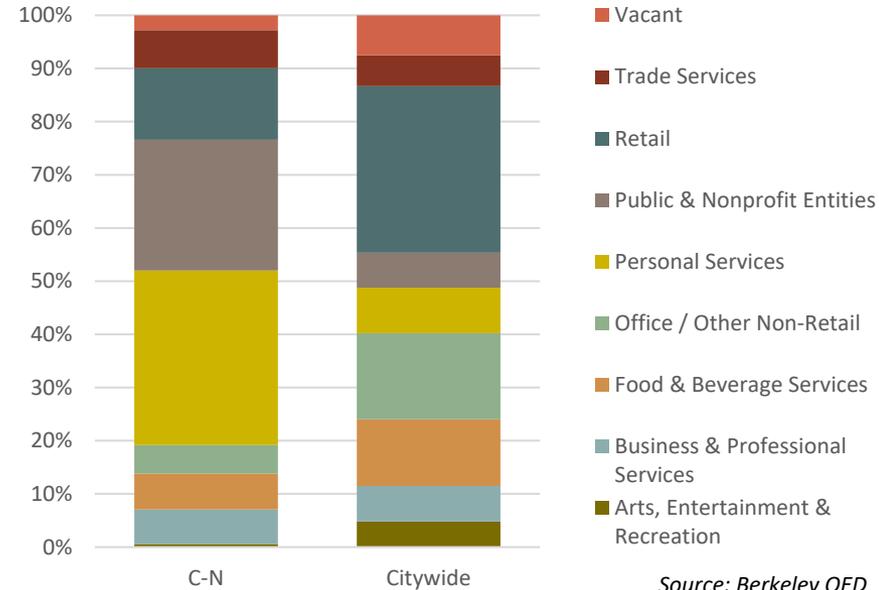
- Claremont and Prince
- Claremont and Tunnel
- College and Alcatraz
- Gilman and Curtis
- Hearst and Euclid
- Hopkins and El Dorado
- Hopkins and Monterey
- Martin Luther King Jr Way (MLK) and Dwight
- MLK and Hearst
- MLK and Rose
- MLK and Virginia

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2020-2024**



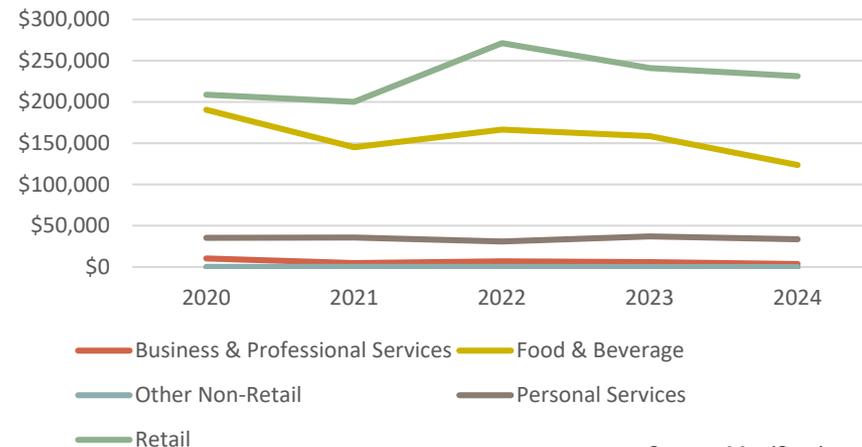
Source: Berkeley OED

**Business Mix (by Square Footage), 2024 Q4**



Source: Berkeley OED

**Sales Tax Revenue by Sector, 2020-2024**



Source: MuniServices



City of

# BERKELEY



2024 Economic Dashboard  
Office of Economic Development

# Table of Contents

## Citywide Economic Dashboard



### EMPLOYMENT ACTIVITY

3-4

- Job Growth, Unemployment, Top 25 Employers

### SECTOR SNAPSHOTS

5-7

- Hospitality
- Innovation & Startups

### COMMERCIAL ACTIVITY

8-13

- Trends & Transactions – Office, Commercial Inventory
- Commercial Districts – Vacancy Rates, Occupancy by Business Type
- Future Development
- Sales Tax Revenues

### HOUSING

14-15

- Development Pipeline & Construction
- Rental Costs & Sale Prices

### OED EFFORTS TO SUPPORT ECONOMIC SUSTAINABILITY

16-25

- Financing Small Businesses
- Marketing Businesses - #DiscoveredinBerkeley
- Enabling Business Networks
- Greening Business Practices
- Developing an Equitable Economy & Future Talent Pipeline
- Grants supporting Arts & Culture

# Employment Activity

## job growth by industry sector & unemployment



Percent East Bay change in employment by sector  
(Nov. 2023 – Nov. 2024)

Sector (in the East Bay)	Percent Change	% of Total Jobs
Architectural, Engineering & Related Services	7.1%	1.5%
Educational & Health Services	4.0%	19.1%
Government	2.0%	14.1%
Accommodation & Food Services	1.5%	7.8%
Leisure and Hospitality	1.4%	9.4%
Arts, Entertainment & Recreation	1.1%	1.5%
Retail Trade	1.1%	9.0%
Administrative & Support Services	0.5%	4.6%
Construction	-0.7%	6.3%
Real Estate & Rental & Leasing	-1.1%	1.5%
Transportation & Warehousing	-1.2%	4.0%
Manufacturing	-2.1%	8.8%
Computer Systems Design & Related Services	-3.0%	1.6%

Source: Labor Market Information (LMI-EDD) for East Bay (Alameda and Contra Costa Counties), December 2024.

### Job Growth

Between November 2023 and November 2024, the total number of jobs located in the East Bay increased by 10,900 or 0.9%. The sectors with the *highest percent* growth in employment included *Education and health services* (up 8,900 jobs) along with *Health care and social assistance* (up 8,400 jobs). Other notable changes included increases in *leisure and hospitality* (up 1,600 jobs), *professional and business services* (up 1,500 jobs). Decreases were noted in the *information* sector (down 1,700 jobs), and *trade, transportation, and utilities* (down 1,100 jobs).

### Unemployment Rates show slight increase year over year:

	2023	2024
California	4.9%	5.4%
Alameda County	4.5%	4.7%
Berkeley	4.0%	4.4%

Source: State of California Employment Development Department (EDD), [Y Charts](#), Labor Market Information (LMI-EDD)

# Employment Activity

## largest employers



### Top 25 Berkeley Employers

Company	Sector
Backroads Inc.	Recreation
Bayer Corp.	Biotech
Berkeley Bowl Produce	Food & Beverage
Berkeley Cement Inc.	Construction
Berkeley City College	Education
Berkeley Emergency Food & Housing Project (Insight Housing)	Social Services
Berkeley Repertory Theatre	Arts & Entertainment
Berkeley Unified School District	Education
City of Berkeley	Government
Fieldwork Brewing Co.	Food & Beverage
Foresight Mental Health	Healthcare
Kaiser Permanente Medical Group Inc.	Healthcare
Lawrence Berkeley National Lab	Laboratory
Lifelong Medical Care	Healthcare
OC Jones & Sons	Construction
Satellite Affordable Housing	Social Services
Sutter Bay Hospital	Healthcare
Target Corp.	Retail
Technical Safety Services	Biotech/Manufacturing
The Wright Institute	Education
Twelve	Manufacturing/ R&D
University of California	Education
UPSIDE Foods	Biotech/R&D
Whole Foods Market	Food & Beverage
YMCA of the Central Bay Area	Recreation

Source: State of California Employment Development Department (EDD), Q1 2024



Controlled Environment Testing | TSS

(Clockwise from top) Technical Safety Services, Insight Housing, Satellite Affordable Housing. Pictured at right:- project ribbon cutting. Credits: Meta, Insight Housing, SAHA



Berkeley's top 25 employers (by number of employees) is reflective of the city's diverse economy. Top employers include four in the healthcare sector and four in the education sector, including UC Berkeley, one of the city's main economic engines. There are also a few large private sector corporations in Berkeley, notably Bayer. Two social service organizations made it onto the 2024 list: Insight Housing (formerly the Berkeley Food & Housing Project) and Satellite Affordable Housing.

# Sector Snapshots

## hospitality



**Berkeley's hospitality sector fared better than neighboring cities, both in hotel occupancy and tourism "image".**



The [Bioneers Conference](#) brought over 1,800 visitors to Downtown Berkeley in March 2024. It will return Mar. 27-29, 2025.

[Highlighted on KTVU](#), a record number of participants participated in [Berkeley Restaurant Week](#).

UC Berkeley became part of the Atlantic Coast Conference, drawing new domestic visitors.



[VisitBerkeley.com](#) webpages such as the [Event Calendar](#), highlight local leisure opportunities. The [Berkeley Bucks](#) e-gift card continues to generate revenue for Berkeley businesses, with \$17K redeemed in 2024.

### Hotel Occupancy & Inventory

- Berkeley hotel occupancy was consistently higher than other Bay Area cities, with **2.4 million overnight visitors** and a **visitor spend of \$187.7 mil.**
- **Average nightly hotel occupancy** made a slight increase from 2023, rising from 70% to **71%**, though still below pre-pandemic average occupancy rates of more than 80%.
- The **average daily room rate** for Berkeley lodging properties rose 3.2% to **\$187.50** per night.
- Berkeley has **lost 8 lodging properties** (7.2% of its hotel inventory) since the pandemic, with most being used to support the unhoused population.
- Berkeley's 2024 hotel tax revenue was just under \$7.1 million, slightly more than 2023.

[Food & Drinks](#), and [Where to Stay](#)



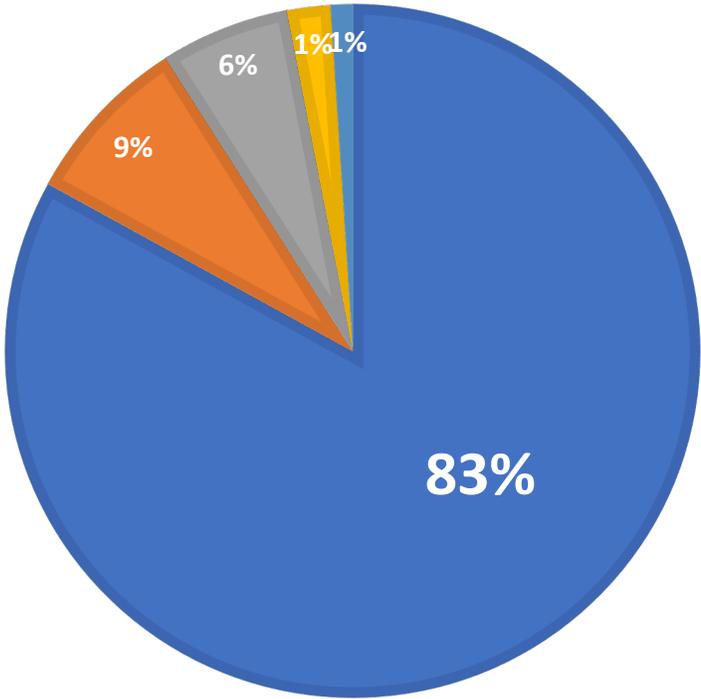
# Sector Snapshots

## startups & innovation businesses



### INNOVATION COMPANIES BY GROWTH STAGE

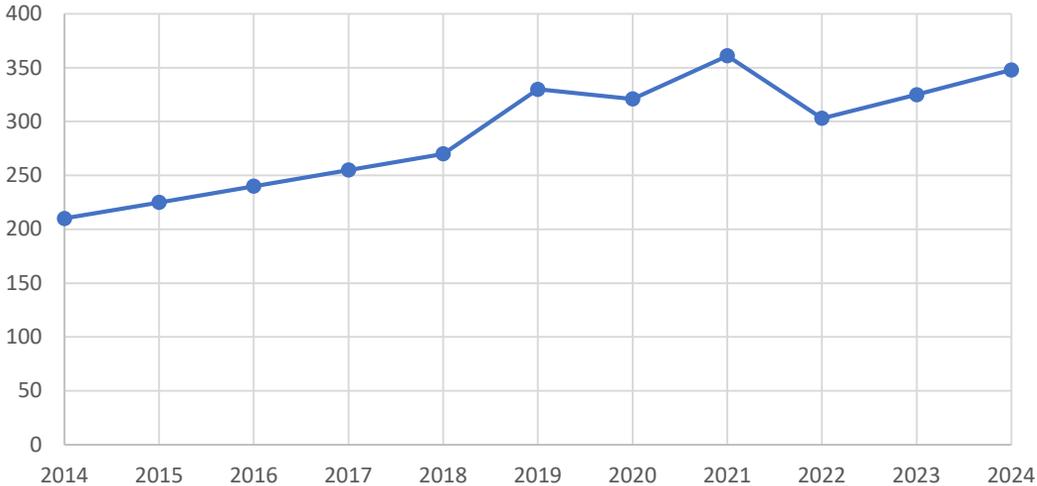
- Startup
- Established company
- Consulting company
- Subsidiary company
- Incubator or coworking facility



Berkeley has more than **400 innovation companies citywide**; the vast majority are startups.

Pitchbook ranked **UC Berkeley #1 in venture-funded startups** founded by undergrad alumni from any university worldwide **AGAIN**.

Number of Startups\*



\*Companies defined as startups are for-profit businesses that sell innovative technology products or services OR substantively use innovative technologies to develop and manufacture their products or provide their services AND are developing repeatable and scalable business models that aren't yet profitable.

Sources: City of Berkeley Office of Economic Development (OED), UC Berkeley IPIRA

# Sector Snapshots

## startup sectors & wealth creation



Despite the difficult 2024 fundraising environment,

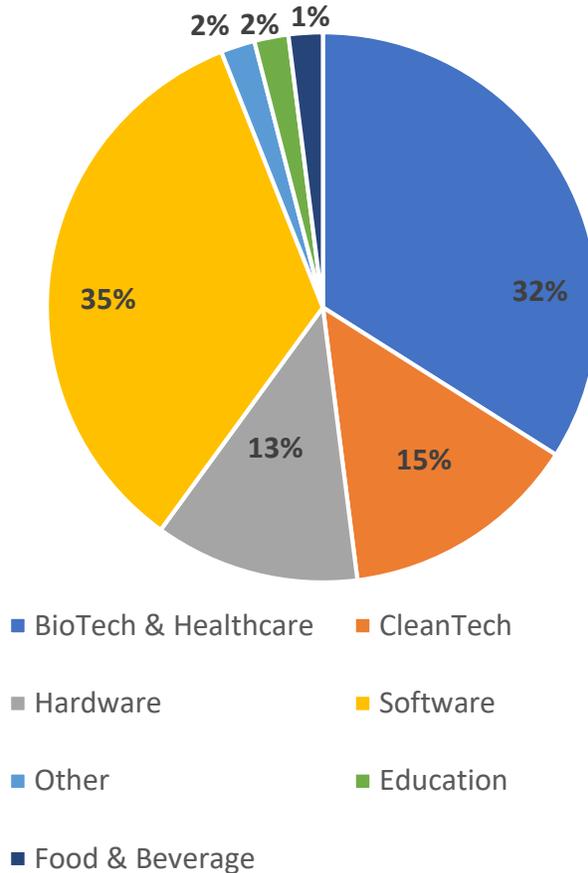
**6** Berkeley startups were acquired and

**58** raised:

- **\$1.2B** in venture and seed capital

- **\$14.3M** in government R&D grants

### Innovation Companies by Industry



### Berkeley Innovation Sector 2024 Highlights

-  **KoBold Metals** : \$537M to use AI to search for critical metals needed for the clean energy transition on 5 continents and to develop a massive copper deposit in Zambia.
-  **twelve** : \$245M to decarbonize commercial aviation and transform CO<sub>2</sub> into Jet Fuel and eChemicals.
-  **Perfect Day** : \$90M to scale manufacturing of dairy protein from fermentation.
-  **Profluent** : \$35M to enable the creation and validation of an AI-generated gene editor and move it closer to improving healthcare and disease treatment
-  **ARRIS** : \$34M to scale high-performing fiber composites in aerospace & consumer markets.
-  **Aircapture** : \$30M to capture atmospheric CO<sub>2</sub> and make it available for industrial applications

# Commercial Activity

## trends & transactions - office



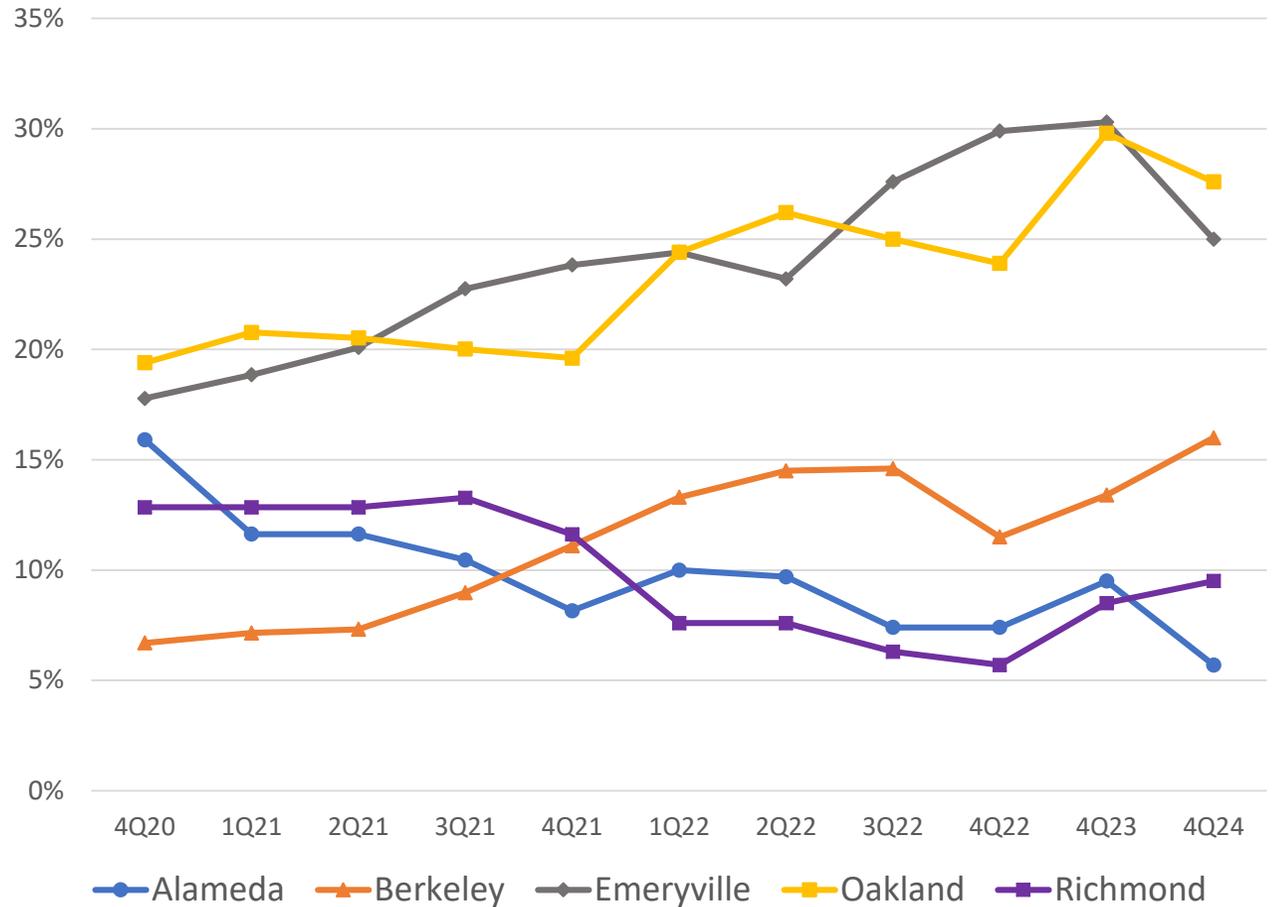
The number of office jobs in the East Bay has yet to return to pre-pandemic levels, with about 10 thousand fewer office-using jobs. Office-based employment is just below early 2017 levels. Overall leasing in the East Bay slowed down in Q4 2024 to about half the annual 10-year average. The average size of office leases has also decreased to just under 3,200 square feet, from roughly 5,600 square feet in years prior. It is anticipated that more distressed properties will go back to their lenders as rental rates continue to decline, and improvement costs remain high.

Source: Newmark Cornish & Carey, 3Q24 & 4Q24 Greater Oakland Office Market Reports

Q4 2024 Office Market, Berkeley	Indicators
Total Inventory	2,967,922 SF
Availability Rate	18.4%
Average Asking Rent	\$3.19/ SF

Source: Newmark Cornish & Carey, 4Q24 Greater Oakland Office Market Report

### Office Vacancy Rate, East Bay Cities Q4 2020 – Q4 2024

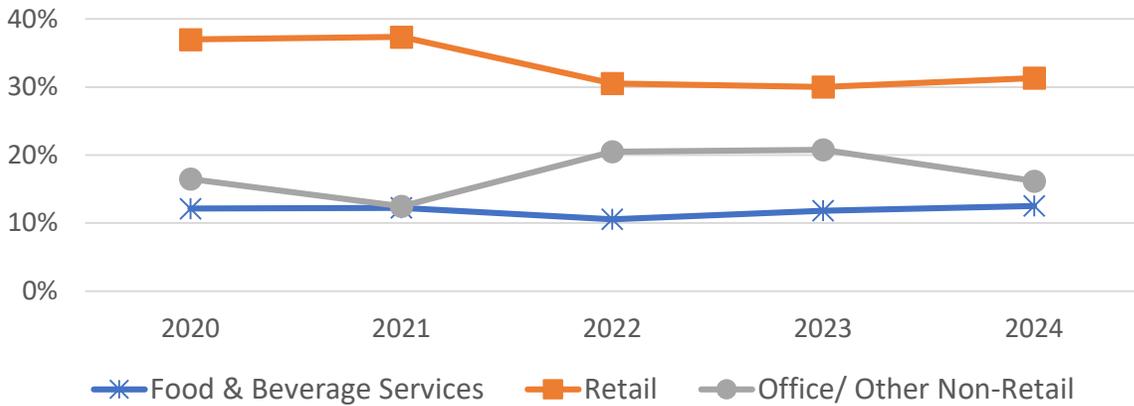


Source: Newmark Cornish & Carey, 4Q24 Greater Oakland Office Market Report

# Commercial Activity

## trends & transactions – commercial inventory

**Citywide Commercial Inventory by Select Categories & Square Footage, 2020-2024**



Together, three sectors (*Food & Beverage, Retail, and Office/Other Non-Retail*) comprised 60% of total 2024 ground floor commercial inventory. Pending developments recorded in the *Office/Non-Retail* category have crested since 2021-2022, as many development projects were completed and opened for occupancy in the past year. In 2024, both *Retail* and *Food & Beverage* as a percentage of total square footage showed slight increases from the year prior (both up by 1%), but *Retail* as a total percentage of ground floor inventory has trended downward since 2020. The *Personal Services* category at 8.6%, *Business & Professional Services* (6.7%) and *Public and Non-Profit Entities* at 6.6% were the next largest categories by square footage.



*Clockwise from top:* A mixed use development site slated for construction at Shattuck and Allston Way; pending future development coming to a former movie theater on Shattuck Avenue; and retail spaces in transition on Shattuck Ave as a result of a pending development project. All are categorized as “Office: Other Non-Retail” in OED’s field survey.



Chart: OED  
Photos: Hoodline, OED, Foursquare

# Commercial Activity

## business district vacancy rates



Citywide, the ground floor commercial vacancy rate has decreased to **7.5%\***, a drop of 0.6% since Q4 2023. The commercial districts of San Pablo, South Berkeley, University, and Solano experienced decreases. Vacancy rates increased in Downtown, West Berkeley, Telegraph, Elmwood, North Shattuck and the C-N districts.

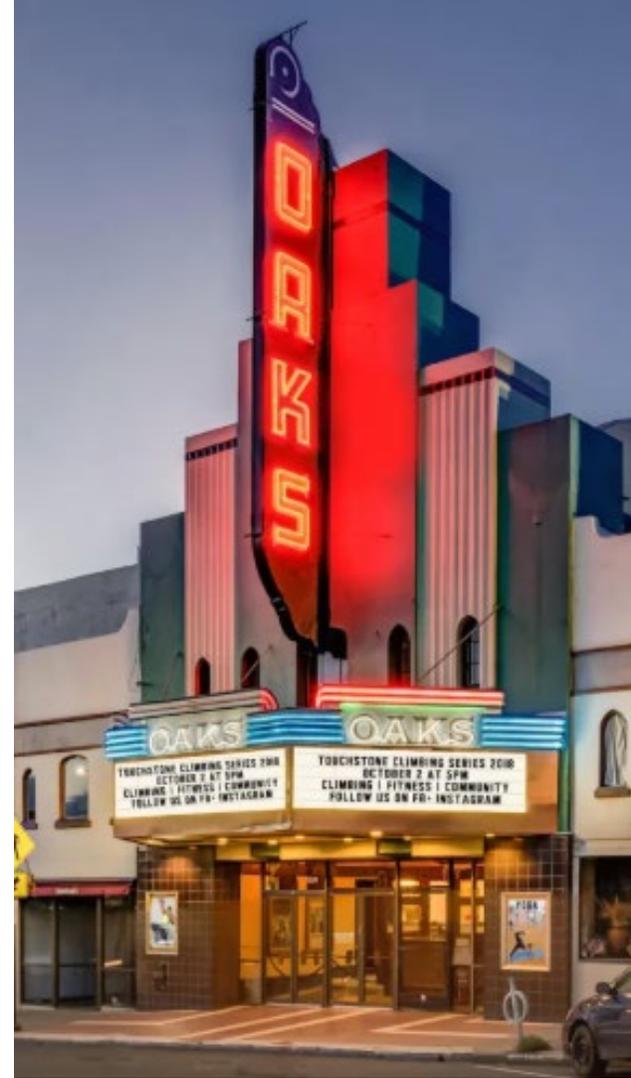
### Vacancy Rates by District, Calculated by Square Footage, 2020-2024

District	2020	2021	2022	2023	2024	Year Over Year Change
Downtown	9.9%	15.7%	11.9%	10.8%	10.9%	↑
Elmwood	10.9%	10.9%	7.7%	6.2%	6.9%	↑
North Shattuck	4.3%	4.3%	4.3%	1.9%	2.0%	↑
San Pablo	4.8%	7.9%	10.8%	15.5%	7.1%	↓
Solano	6.7%	4.4%	3.7%	2.6%	2.1%	↓
South Berkeley	10.1%	8.8%	11.8%	19.2%	8.9%	↓
Telegraph	17.2%	12.6%	8.5%	9.3%	9.9%	↑
University	11.0%	9.1%	12.8%	17.7%	7.7%	↓
Neighborhood Commercial (C-N)	7.3%	3.2%	2.3%	2.6%	2.8%	↑
West Berkeley	3.7%	4.7%	5.2%	2.2%	6.5%	↑
Citywide Avg.	6.9%	8.3%	8.4%	8.1%	7.5%	↓



Photos (l-r): R. Moon, Influent Home

\*Typical commercial district storefront vacancy rates range from 5-15% due to natural market churn. Proposed and pending development projects throughout the city have an impact on vacancy rates as well as new openings with large floorplates (pictured left).



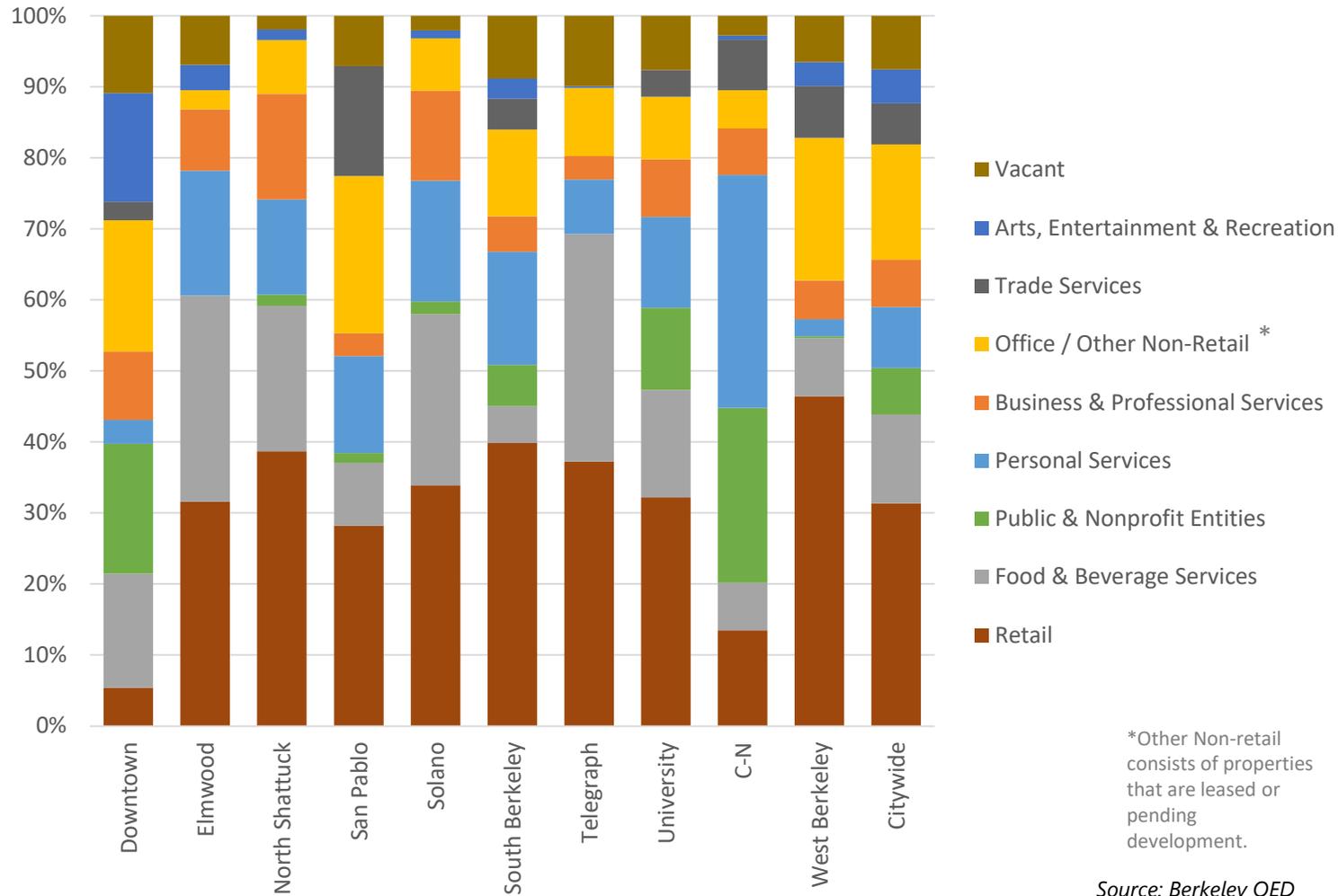
Source: Berkeley OED

# Commercial Activity

## ground floor space occupancy by business type



Ground Floor Commercial Occupancy By Category, 2024



Retail comprises the most significant percentage (31%) of ground floor space across Berkeley commercial districts, with **Food & Beverage** also representing a large portion (13%) of occupancy, especially in the Telegraph, Elmwood, Solano, and North Shattuck districts.

- **Downtown** and **San Pablo** have the dominant share of Office/Other Non-retail (18% and 21%) due to the high level of development activity that includes ground floor retail with housing above.
- **West Berkeley** (including 4<sup>th</sup> Street) has the highest concentration of Retail (46%).
- **Downtown** has the highest vacancy rate (10.1%), followed by **Telegraph** (9.9%) and **South Berkeley** (8.6%).

\*Other Non-retail consists of properties that are leased or pending development.

Source: Berkeley OED



Photos: The Spanish Table, Casa de Chocolates, Visit Berkeley

# Commercial Activity

## future development



The **Gateway Center** on the UC Campus will house the College of Computing, Data Science, and Society (CDSS), the first new college at UC Berkeley in 50 years. Image: Weiss/Manfredi



(Left) The proposed **UC Innovation Zone** would include two buildings – a South Building and North Building totaling approximately 486,000 gross square feet – with academic research and collaboration space, parking, and open space. Image: UC Regents, South Building Rendering (May 2024)

**New Buildings**

UC Berkeley will soon be the largest rate payer to the Downtown Berkeley BID\* – a number of planned and recently completed projects surrounding the campus are providing spaces to conduct research, learn, and live.

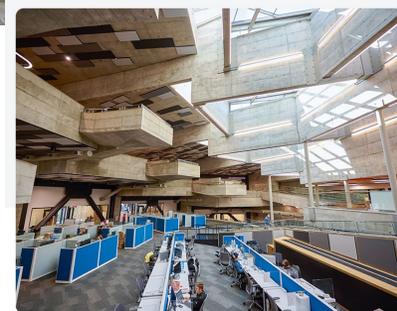
\* **BID** – Business Improvement District, a fund that supplements public services within geographically defined boundaries.



(Left) The Helen Diller **Anchor House**, a dorm for transfer students to UCB, opened for the 2024 academic year. Photo: Jason O’Rear



(Above and Right) **Bakar Labs**, where UC Berkeley and QB3 run a life science-focused incubator for startups developing innovative technologies to benefit society. Photo: QB3



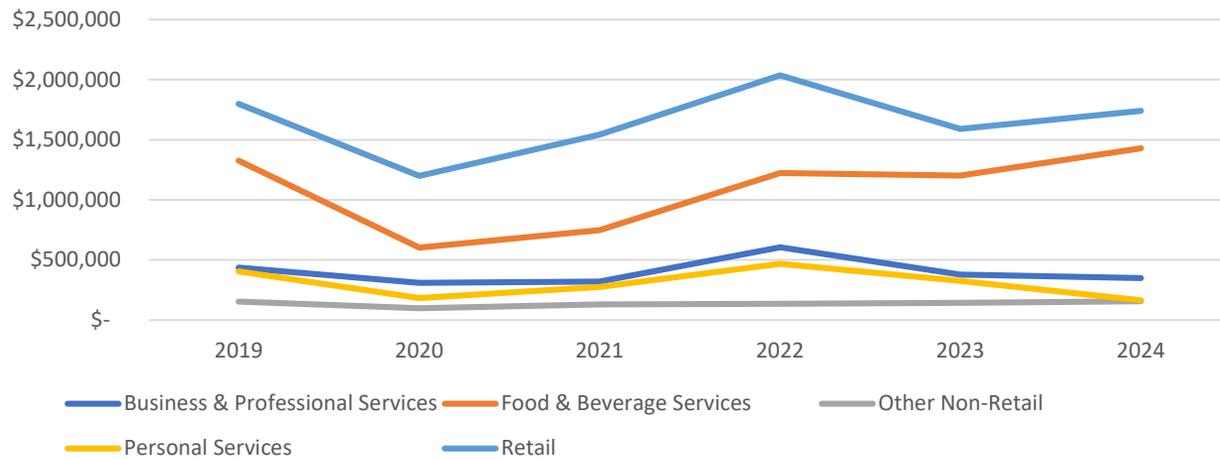
# Commercial Activity

## sales tax revenues in 2024



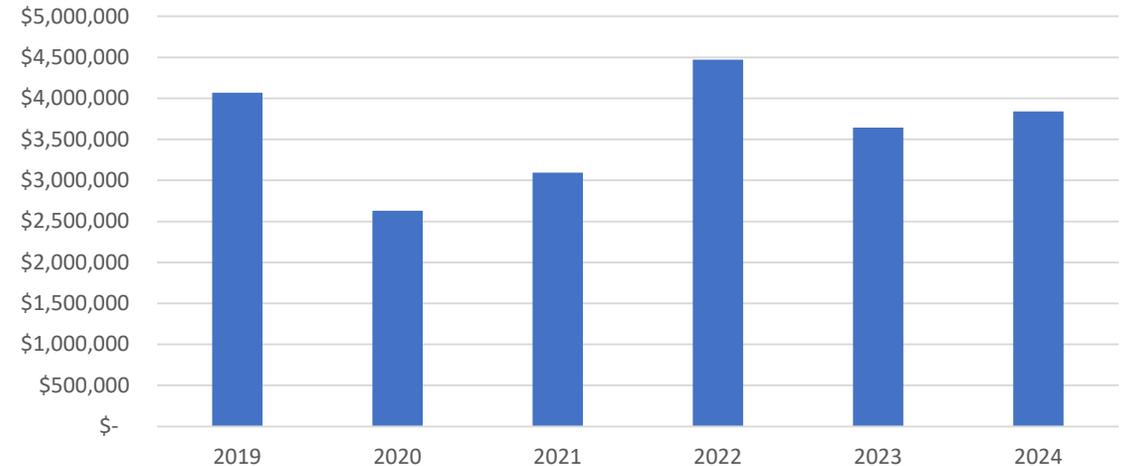
Total Annual Sales Tax Revenue (Q2 + Previous Three Quarters)	July '22 to June '23	July '23 to June '24	% Change (Year over Year)
City of Berkeley	\$14,709,995	\$18,893,092	28.4%
Alameda County (total including cities)	\$447,204,095	\$385,954,179	-13.7%
State of California	\$9,510,809,118	\$9,376,883,707	-1.4%

Berkeley Q2 Sales Tax Revenue by Business Category



Source: MuniServices, Quarter 2 (Apr-June) Collections 2019 to 2024

Total City of Berkeley Q2 Sales Tax Revenues

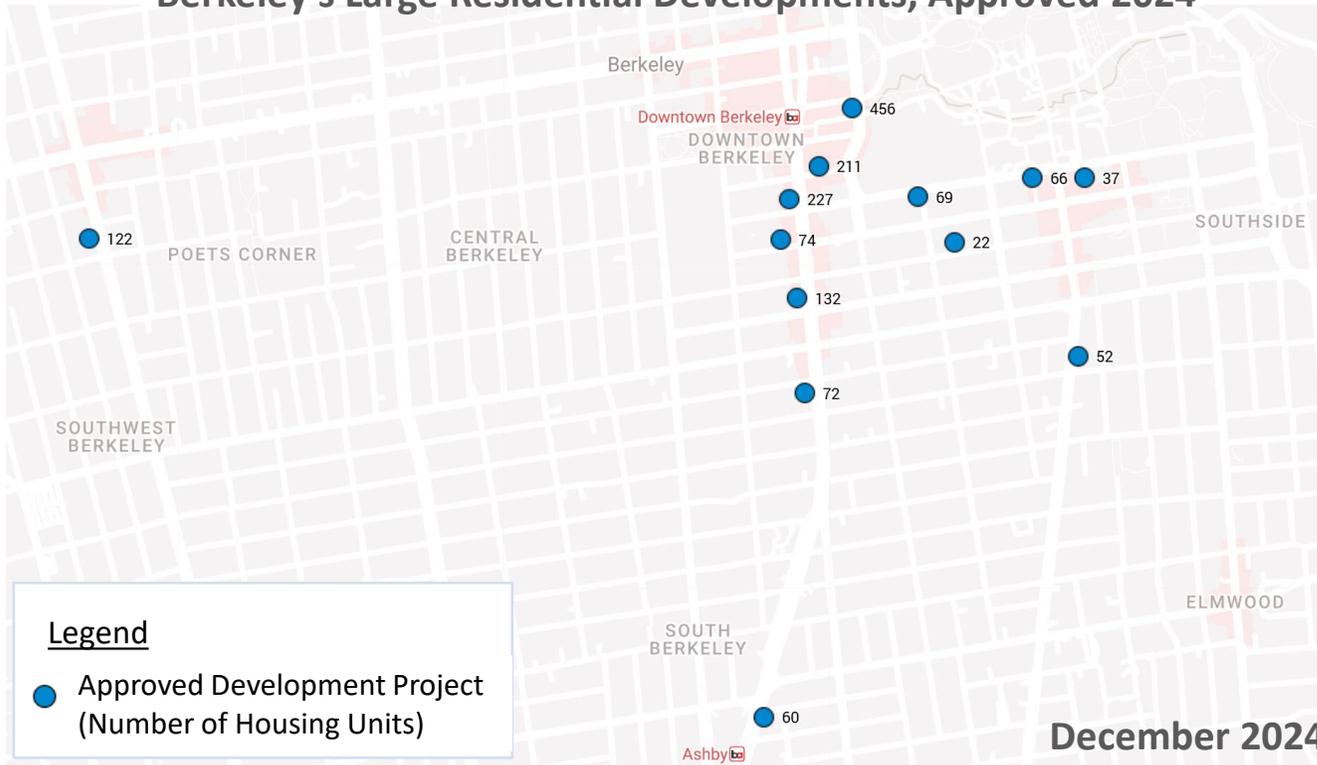


Source: MuniServices, Quarter 2 (Apr-June) 2019 to 2024, Nominal Values

In Q2 2024, the *Retail* subsector was the largest contributor to the city’s sales tax revenue (45%), with *Food & Beverage* second (37%). Sales tax revenue was up 5% from the same period in 2023, and is higher than citywide sales tax collected in the second quarter of both 2020 and 2021 (acute phases of the COVID-19 pandemic). Compared to Q2 last year, sales tax revenue across most business categories is up, with *Retail* increasing by 9% and *Food & Beverage* increasing by 19%. Decreases were noted in the *Personal Services* category where collections have decreased by 49% (owing to mostly service stations & fuel costs) and in the *Business & Professional Services* sector where collections are down by 8% from Q2 2023.

## development pipeline & construction

### Berkeley's Large Residential Developments, Approved 2024



#### Legend

- Approved Development Project (Number of Housing Units)

#### Housing Development Pipeline

In 2024, applicants submitted land use permit applications for **13 distinct projects** representing a total of **1,600** new housing units. The plans span several neighborhoods and are typically close to transit corridors and the UC Berkeley campus, the largest of which is “The Hub” at Oxford and Center Streets (456 Units). See 2128 Oxford St, inset at right.

Sources: City of Berkeley Department of Planning and Development, December 2024, Map OED.

### Pipeline & Construction Highlights



#### 2029 University Ave (at Shattuck)

If built as proposed, this 23-story tower supported by Laconia Development at 2029 University Avenue will add either 240 multi-family or 160 student housing units to Downtown Berkeley. If all projects in the current development pipeline are built as proposed, 2029 University Avenue will be the sixth tallest project in the pipeline, surpassed by 1998 Shattuck Avenue, 2128 Oxford Street, 2190 Shattuck Avenue, 2200 Bancroft Way, and (potentially) 2115 Kittredge Street.

#### The Lair 2077 Haste St (at Shattuck)

In the fall of 2024, the new Lair housing building on Haste at Shattuck Ave brought online 40 new homes, and a living wall at the dwelling entrance.



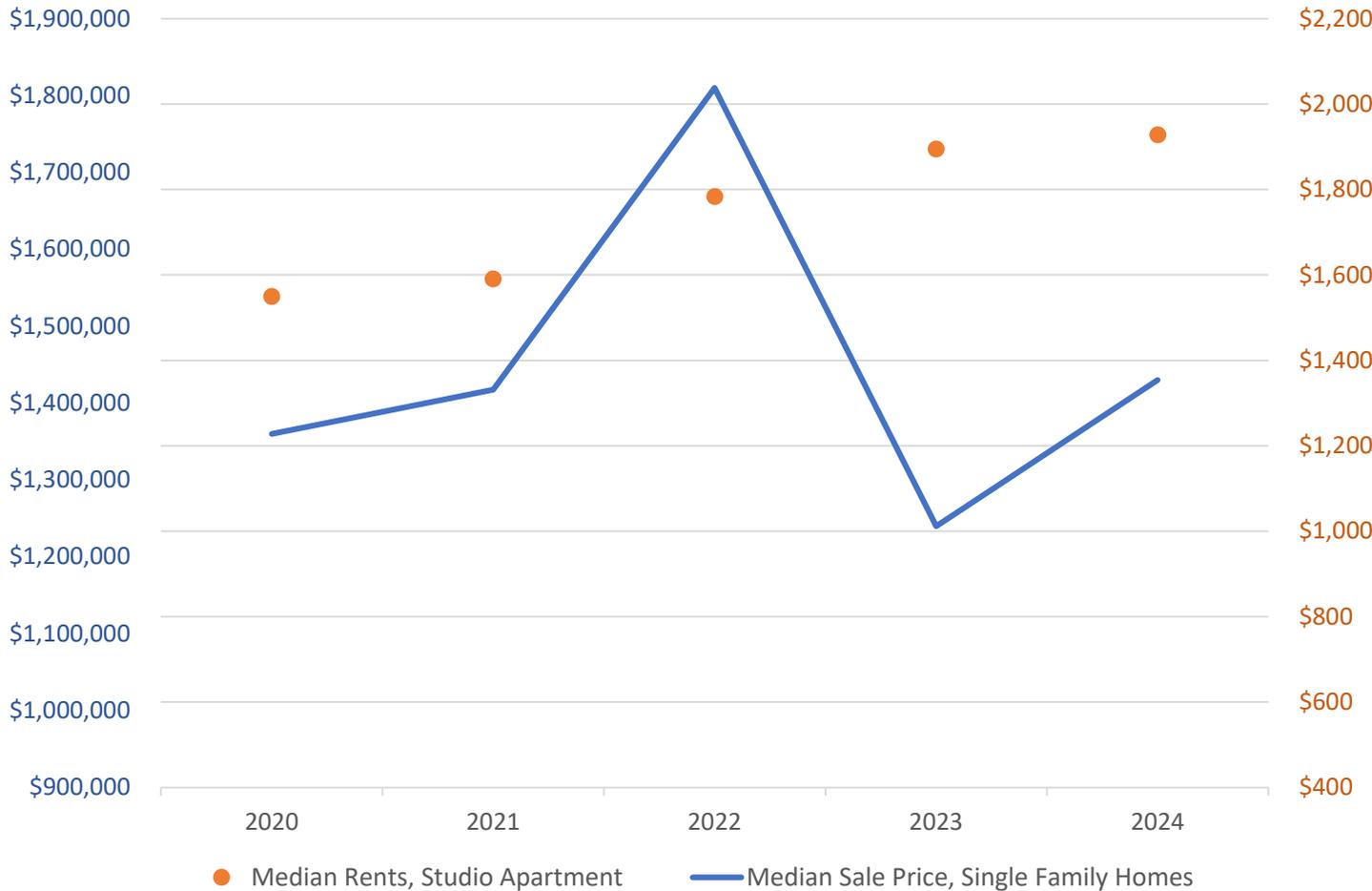
Sources (from top): SF YIMBY, Rentable, Apartments.com

# Housing

## rental costs & sale prices



### Housing Prices in Berkeley, 2020-2024



Sources: Redfin, Apartment List, Zumper, Rent Cafe, and City of Berkeley Rent Stabilization Board

### Median Sale Price, Single-Family Homes, Nov. 2024

Alameda	\$1,170,000
Albany	\$1,325,000
<b>Berkeley</b>	<b>\$1,430,000</b>
El Cerrito	\$1,400,000
El Sobrante	\$782,500
Emeryville	\$585,000
Oakland	\$802,500
Richmond	\$665,000
Piedmont	\$2,900,000
San Leandro	\$875,000

Source: Redfin

### Home sales soften, sale prices increase, rental prices flatten

Berkeley's single family home values increased 7.5% from Nov. 2023 - 2024, with a 12% decrease in sales volume over the same period. 44 single family homes were sold in Berkeley in Nov. 2024, with an average of 15 days on the market. Over the past five years (2020-2024), the median price of single family homes in Berkeley hit an all time high (\$1.81M) in April 2022.

Berkeley's **average rents** for studio apartments increased by 1.7% between Dec. 2023- 2024 to an average of \$1,928 per month.

Sources: Redfin, Multiple Listing Service or "MLS", Zumper - Rental Market Trends



# OED efforts to support local economic sustainability

# Financing small businesses through the Revolving Loan Fund & Resiliency Loan Program



Revolving Loan Fund Portfolio	Active Loans
Number of RLF Loans	6
RLF \$ Outstanding Principal	\$375,000

Source: Berkeley OED, December 2024

COVID-19 Resiliency Loan Program Portfolio	Active Loans
Number of RLP Loans	18
RLP \$ Outstanding Principal	\$435,000

Source: Berkeley OED, Working Solutions, December 2024

## Current Revolving Loan Fund (RLF) Borrowers:



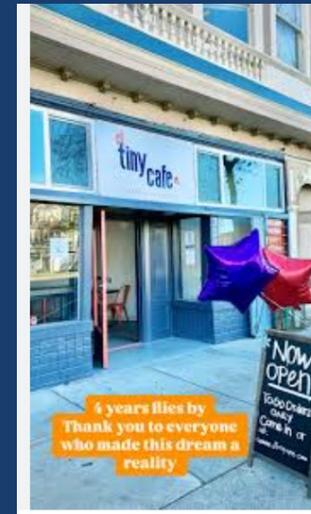
## Supporting Berkeley's existing small businesses

The Resiliency Loan Program (RLP) program, administered by Working Solutions, a Community Development Financial Institution (CDFI), was established to help Berkeley businesses weather the impacts of the pandemic. It is a revolving fund with 18 active loans to Berkeley borrowers.



In 2024, City of Berkeley RLP loan recipient *El Tiny Cafe* celebrated their 4<sup>th</sup> Anniversary. Café owners Lily and Alan gained access to a suite of business support services, including a Spanish-speaking Working Solutions business consultant who helped them streamline operations and enhance profitability.

Today, El Tiny Cafe is a community anchor in their South Berkeley neighborhood.



Source: CDFI.org, Working Solutions



# Marketing businesses #DiscoveredinBerkeley

The [Discovered in Berkeley](#) marketing campaign highlighted businesses enabling adventure travel, producing beloved baked goods like bagels and scones, manufacturing induction stoves, scooping artisanal ice cream, and curating tea ceremonies.

By year end, the campaign had made ~4.4M impressions and generated nearly 179K concrete engagements. Since 2023, *Berkeleyside* articles saw more than a 4K increase in readers (19K+ unique page views) and the .28% banner ad click-through-rate more than doubled, exceeding *Berkeleyside's* site average (.15%-.20%). The 3.7K click through on in-story links increased from 1.6K in 2023.

[Instagram @DiscoveredinBerkeley](#) achieved 1,475 followers and #DiscoveredinBerkeley achieved nearly 6K uses.



Make authentic and meaningful connections on a luxury active vacation planned by Berkeley adventure travel company, **Backroads**.

Learn more about Berkeley's innovative businesses >



Find traditional tea scones, galettes, omelets and more at **Sconehege**, a 26-year-old, worker-owned bakery and café in Berkeley.

Learn more about Berkeley's innovative businesses >



In West Berkeley, **Copper** designs induction stoves that enable faster, more precise cooking and don't require costly electrical upgrades.

Learn more about Berkeley's innovative businesses >



**Boichik Bagels** employs a combo of people, robotics and technology to produce amazing-tasting bagels.

Learn more about Berkeley's innovative businesses >



**BERKELEYHOLIDAYS.COM** Gift Guide

At **Teance** in West Berkeley tea is more than a drink – it's a lifestyle.

Learn more about Berkeley's innovative businesses >



Enjoy summertime and reminisce about childhood at **iScream!** on Solano Ave and Fourth Street.

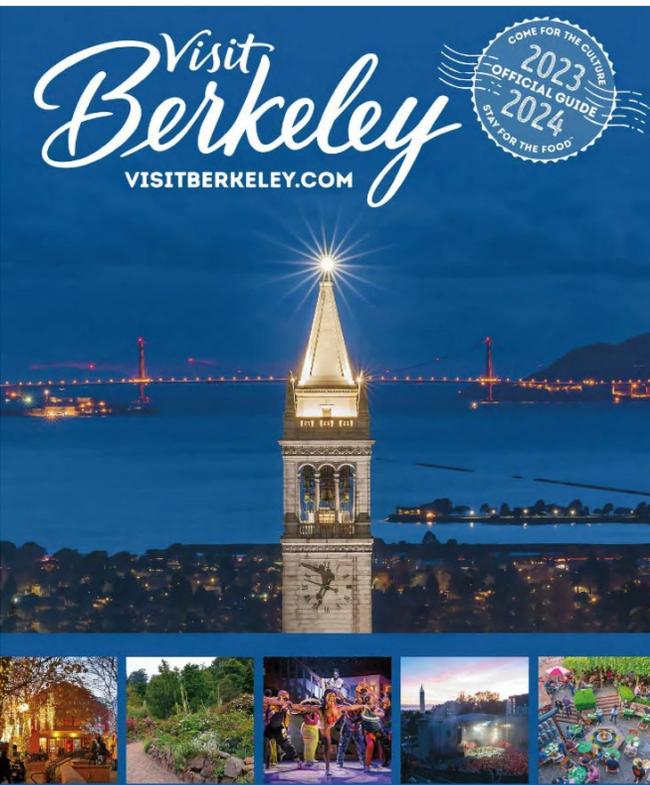
Learn more about Berkeley's innovative businesses >



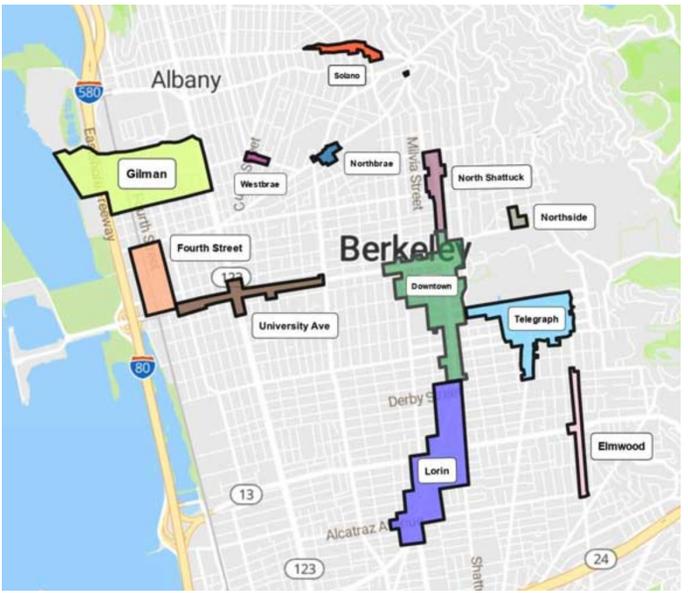


# Enabling sustainable business networks

- OED supports local BID, Visit Berkeley, and the Berkeley Chamber through the Berkeley Business District Network (BBDN).
- *Coming in 2025* – 10 year strategic planning and district renewal activities for the Downtown and Tourism BIDs in Berkeley.



Map of Berkeley's Commercial Districts



# Greening local business practices

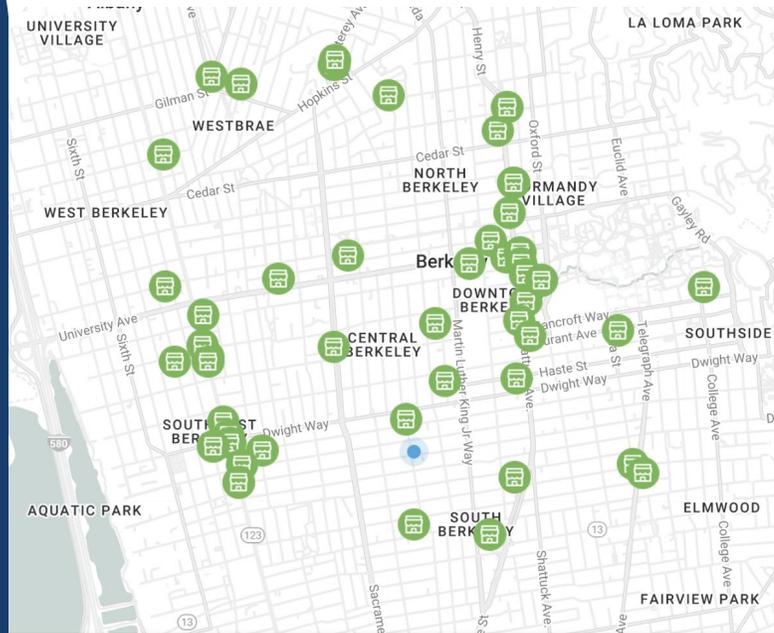
## Going Green Helps Companies Achieve Environmental Benefits and Cost Savings

171 Berkeley companies have registered for California Green Business Program certification. **79 are currently green business certified.**

In 2024:

- 8 new green businesses certified
- 10 green businesses recertified
- 1,710,242 gallons of water saved
- 1,029,154 kWh of electricity conserved
- 192,816 lbs of solid waste diverted
- 1,059 gallons of fuel saved

## Green Businesses in Berkeley



See Berkeley Green Businesses at [www.greenbusinessca.org](http://www.greenbusinessca.org)

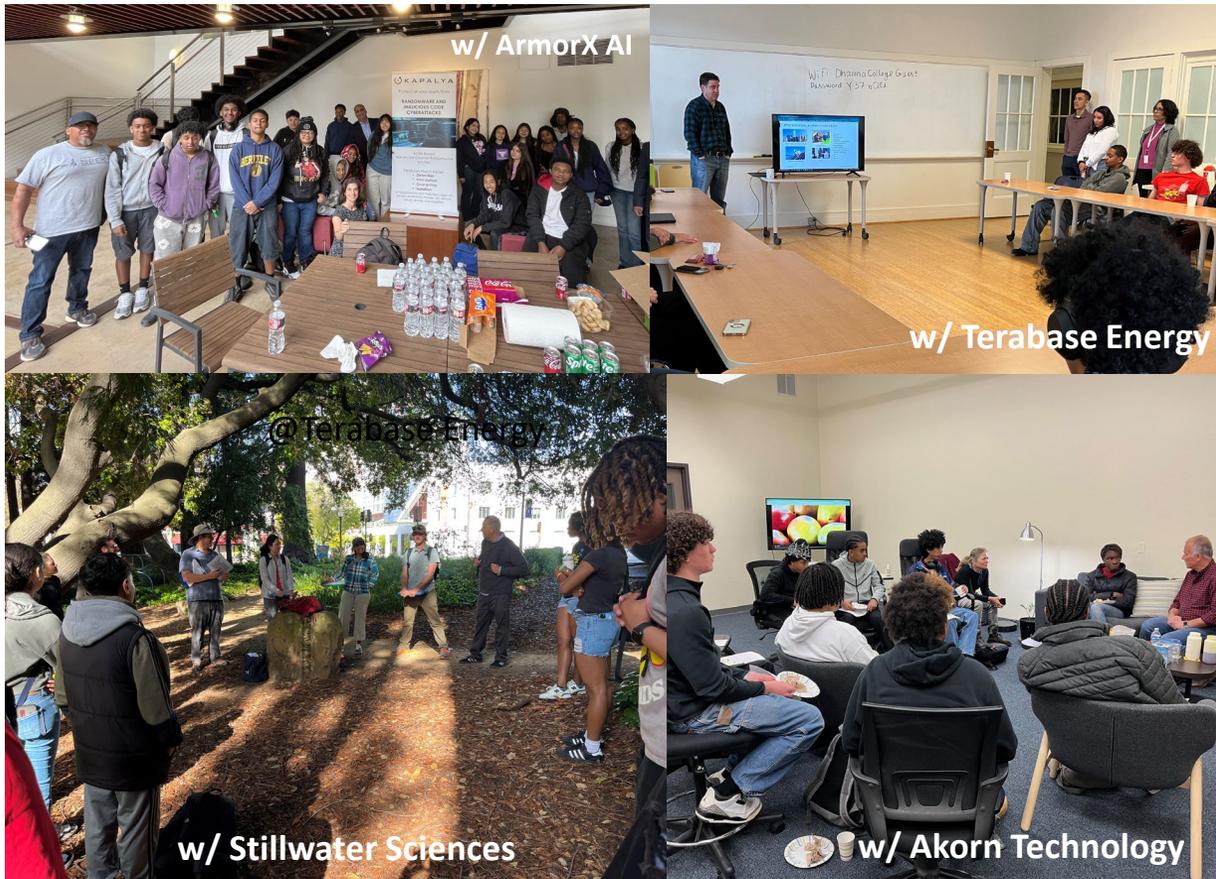


The Potters Studio uses a filter press to recycle clay and process glaze water, changed the studio over to LED lighting, uses environmentally responsible cleaning supplies, and continues to look for ways to be a [sustainable studio](#).

# Deepening and diversifying Berkeley's talent pipeline



OED and the [Institute for STEM Education at Cal State University](#) arranged 125 Berkeley High School student-visits at 7 STEM CareerX tours in 2024. The company tours provided an opportunity for students to see how their science, technology, engineering and math (STEM) skills apply in the workplace, as part of the Berkeley Startup Cluster's *Berkeley Ventures, Berkeley Values* initiative.



**TDK:** *"I appreciated making those professional connections; it's something you can't just get without being there in person."*

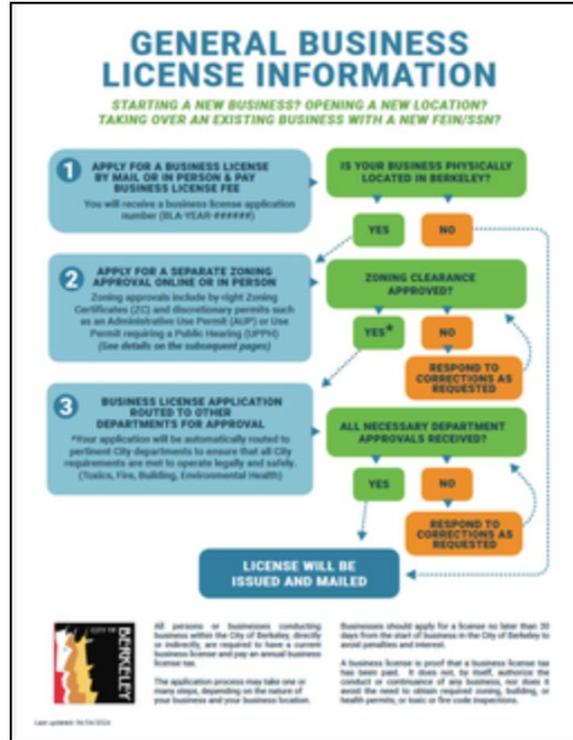
**Terabase Energy:** *"The hands-on activities made it feel like we were actually part of the company for a day, not just visitors."*

**Stillwater Sciences:** *"It's pretty cool that the place we live is, like, such a hub for STEM companies... It makes you want to contribute to the community because there's literally so much, like STEM companies, engineering companies, stuff like that."*

# Promoting equitable development



In 2024 OED partnered with the Berkeley Chamber to provide easy-to-digest information on how to engage with the city and work, invest, and grow a business in Berkeley. A new Chamber Doing Business in Berkeley webpage, webinars, and downloadable materials from the City of Berkeley website now help local business leaders navigate government requirements for launching or expanding a business in Berkeley.



**DO YOU HAVE A STARTUP OR INNOVATION BUSINESS?**  
THE CITY OF BERKELEY CAN HELP YOU:

1. GET (OR SHARE) INFORMATION ABOUT RESOURCES AND OPPORTUNITIES
2. INCREASE YOUR COMPANY'S LOCAL VISIBILITY
3. MAKE NEW LOCAL CONNECTIONS
4. FIND AND LEASE (OR SUBLEASE) BERKELEY OFFICE & LAB SPACE
5. OBTAIN AN OVER-THE-COUNTER ZONING CERTIFICATE FOR R&B
6. GET ASSISTANCE FILING FOR A BUSINESS LICENSE
7. EXEMPT GOVERNMENT AND PHILANTHROPIC R&D SHARERS FROM LOCAL BUSINESS LICENSE TAXES
8. ATTEND OR HOST A BERKELEY STARTUP CLUSTER NETWORKING OR EDUCATIONAL EVENT
9. INCREASE THE DIVERSITY OF YOUR WORKFORCE
10. CONNECT WITH ELECTED OFFICIALS

CONTACT THE OFFICE OF ECONOMIC DEVELOPMENT AT [SEDMALDO@BERKELEY.CA.GOV](mailto:SEDMALDO@BERKELEY.CA.GOV) FOR GUIDANCE STARTING OR EXPANDING A BUSINESS

**ZONING RULES FOR BERKELEY RESTAURANTS, BARS & ENTERTAINMENT BUSINESSES**  
Streamlined City of Berkeley zoning rules will save time & money for existing and prospective owners of Berkeley restaurants, bars and entertainment venues.

1. EXPAND-ALONG BEER AND WINE SERVICE
2. INSTALLED ALCOHOL SERVICE INCIDENTAL TO EXISTING FOOD SERVICE
3. BARS WITH DISTILLED ALCOHOL SERVICE
4. EXPANDED HOURS OF OPERATION
5. LIVE ENTERTAINMENT
6. AMPLIFIED LIVE ENTERTAINMENT
7. RESTAURANTS 3,000 SF OR LESS
8. RESTAURANTS 3,000 SF OR MORE

ZC = ZONING CERTIFICATE (over the counter approval)  
AUP = ADMINISTRATIVE USE PERMIT (permit requiring staff review & approval)

**DOING BUSINESS IN BERKELEY FORUM**  
**DOING BUSINESS IN BERKELEY: Your Questions Answered**

ARE YOU:  
1. Starting a new business?  
2. Opening a new location?  
3. Taking over an existing business?

Join us for an online webinar to learn the steps required to get a Berkeley Business License, and how to avoid common mistakes.

**FRIDAY, NOVEMBER 15**  
9:00 AM to 10:00 AM  
Online ZOOM Webinar

**Doing Business In Berkeley: Your Questions Answered**  
Webinar Recording & Slideshow

Starting a new business? Opening a new location? Taking over an existing business? Learn the steps required to get a Berkeley business license and how to avoid common mistakes.



**Project Equity**

In partnership with Project Equity, OED offers Berkeley businesses support with succession planning and transition to employee ownership.



# Funding arts & culture in Berkeley

## Sustaining Berkeley's Arts and Culture Sector

The City of Berkeley Civic Arts program provides grants to support a vibrant arts ecosystem, strengthen diverse cultural expressions, and ensure equitable access to arts and culture throughout Berkeley.

Civic Arts Grants Awarded in 2024 for deployment in 2025:

- 11 individual arts projects (\$44,000)
- 34 community festivals (\$199,680)
- 55 arts organizations (\$444,799)
- 12 arts program grants (\$60,000)

## Leveraging Local Funds to Increase Arts Grants

**Arts Program Grants.** Leveraging local 1:1 matching funds, in 2024 the City received a \$40,000 National Endowment for the Arts grant to continue the new *Arts Program Grants* category for a second year, providing an additional \$80,000 to better support Berkeley arts and cultural programming.

## Berkeleyside

Nonprofit news. Free for all, funded by readers.

ARTS

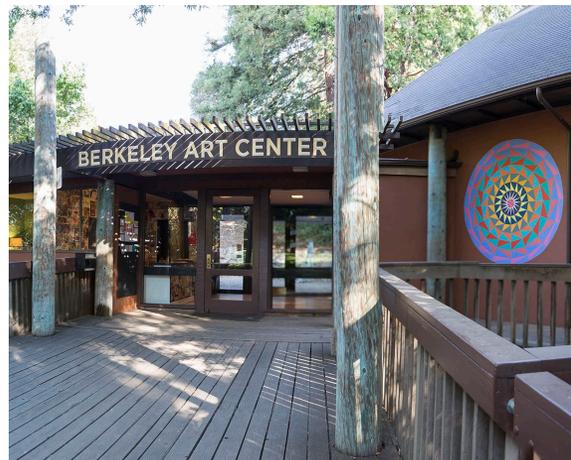
### Berkeley gave these artists \$4,000 each to create an original project. Here's what they're doing

We spoke with four of the 11 grant recipients about their work, which ranges from public wellness dance classes to a James Baldwin-inspired audio project.

By Iris Kwok  
Feb. 3, 2025, 10:50 a.m.



Source: Kwok, Berkeleyside



Left: ¡BAILA! Community Dance Party at La Peña Cultural Center, general operating support grantee. Photo source: www.lapena.org.

Right: Berkeley Art Center, general operating support grantee. Photo source: www.berkeleyartcenter.org.

# Investment in public art in Berkeley

## Public Art throughout Berkeley

In FY24, the Civic Arts Program implemented a portfolio of public art projects valued at nearly \$700,000. Those projects included:

- Commissioned large bronze sculpture by Mildred Howard. The piece was installed at Adeline and Martin Luther King, Jr. Way and unveiled at the 2024 Juneteenth celebration dedication event.
- Restored a collaborative public art installation at the Berkeley transit node created by muralist John Wehrle and poet Betsy Davids, “Mak Roote.” In recent years the artwork had suffered from vandalism, as well as fading and staining from overhead roadway runoff.



Right: Restoration of “Mak Roote” murals by John Wehrle and Betsy Davids in West Berkeley in 2024. Photos: Mark Salinas



Left: “Delivered, Mable’s Promissory Note”, 2024 by Mildred Howard installed in South Berkeley. Photo: Ethan Kaplan.



City of

# BERKELEY

## Office of Economic Development (OED)

See the OED website for past Economic Dashboards and other economic reports:

<https://berkeleyca.gov/doing-business/economic-development/economic-dashboards-and-reports>

Contact OED for more information:

[oedmailbox@berkeleyca.gov](mailto:oedmailbox@berkeleyca.gov)



Office of the City Manager

PUBLIC HEARING  
February 27, 2024

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development  
 Subject: Zoning Amendments for Berkeley Business; Amending Berkeley Municipal Code Title 23

### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an ordinance amending Title 23 of the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts (“C-Prefixed”), select manufacturing (“M-Prefixed”) districts, and the Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU) zoning districts.

### SUMMARY

In 2019, the City Council adopted a referral (**Attachment 4**) with a set of nine policy considerations “to streamline the zoning review process for new or expanding small businesses,” intended to support Berkeley businesses and bolster Berkeley’s commercial districts. Between 2020 and 2023, the Planning Commission met and considered these recommendations and developed seven additional policy recommendations. Council consideration of these proposals will conclude work on the 2019 referral.

The proposed ordinance would to streamline and clarify the permitting process for small businesses in Berkeley by implementing the following changes:

- **Group Class Instruction:** Reduce the level of permitting discretion for Group Class Instruction and clarifying definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”
- **Incidental Distilled Spirits:** Revise permit requirements and provide clear performance standards for restaurants that wish to serve Incidental Distilled Spirits at a Food Service Establishment.
- **Stand-Alone Beer and Wine Sales and Service:** Permit stand-alone Beer and Wine Sales and Service with an administrative use permit (AUP), subject to performance standards, in all commercial zoning districts.

- **Alcohol Service, Live Entertainment, and Hours of Operation:** Modify the special use standards related to Alcohol Service, Live Entertainment, and Hours of Operation in select C-prefixed and M-prefixed districts.
- **Change of Use:** Removing the permit requirements to change a use in commercial districts, thereby reducing permitting time and costs for small businesses getting established in existing commercial spaces.
- **Office, Business and Professional; Art/Craft Studio; Pet Stores:** Reduce the level of permitting discretion for Office, Business and Professional; Art/Craft Studio; and Pet Stores in select C-prefixed districts.
- **Food Service:** Reduce levels of permitting discretion for food service in commercial and select manufacturing districts and in R-SMU and R-BMU zoning districts, as long as alcohol service is not included. Remove restrictions on rentals of food service establishments to third parties, and on outdoor and seated food service with alcohol in select C and M prefixed districts. Remove quotas on food service in the C-E (Elmwood) district.
- **Drug Paraphernalia Stores:** Remove the prohibition on uses involving sale or distribution of drug paraphernalia in the C-T (Telegraph) district.

These recommendations were considered by the Planning Commission and the Planning Commission's Zoning Amendments for Berkeley Business Subcommittee in the context of current zoning regulations and General Plan objectives. Staff subsequently developed a refined set of corresponding proposed Zoning Ordinance amendments.

On October 4, 2023, the Planning Commission held a public hearing (**Attachment 2**) and unanimously recommended the proposed zoning amendments to the City Council (Motion/Second (Mikiten/ Moore). Ayes: Merker, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh, and Vincent. Noes: None. Abstain: None. Absent: None (9-0-0-0)).

The zoning amendments are contained in **Attachment 1**, and are proposed for City Council adoption. The proposed zoning amendments advance the City's Strategic Plan goals to foster a dynamic, sustainable, and locally-based economy and to provide excellent, timely, easily accessible service and information to the community.

#### 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 proposed zoning amendments reflect policy changes that are summarized in *Table 1: Referral Actions and Zoning Amendment Proposals*. Detailed explanations of the proposed zoning amendments are included below.

The first set of proposed zoning amendments reflect specific previously referred actions from City Council, while the second set of proposed zoning amendments reflect staff-initiated changes that are consistent with the previous direction and intent of City Council referrals, and which are recommended by the Planning Commission. Table 1 also includes a column which indicates which Section(s) of the proposed ordinance include changes related to the indicated referral actions. **Attachment 3** is an annotated version of the proposed ordinance that includes comments for each Section which refer to items in Table 1.

**Table 1: Referral Actions and Zoning Amendment Proposals**

	<b>Policy Change</b>	<b>Proposed Zoning Change</b>	<b>Ordinance Sections (Attachments 1 and 3)</b>
<b>2018-2019 CITY COUNCIL REFERRALS</b>			
1.	<p><b>Group Class Instruction.</b> Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Council 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>	<ul style="list-style-type: none"> <li>Removed “Dance/Exercise /Martial Arts/Music Studio” definition and revised the definition of “Group Class Instruction” (simplified to “Group Instruction”). (Section 22)</li> <li>Replaced “Gyms and Health Clubs” use with new “Health and Fitness Facility” use and definition. (Section 25)</li> <li>Changed permit requirements and size thresholds. (Sections 1, 2 and 3)</li> </ul>	<p>1 2 3 4 11 13 22 24 25 26 27</p>

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachments 1 and 3)
		<ul style="list-style-type: none"> <li>Removed ground floor transparency requirement for gyms in the C-DMU, for customer privacy. (Section 4)</li> <li>Conforming technical edits, e.g., renumbering and references.</li> </ul>	
2.	<p><b>Incidental Distilled Spirits.</b> 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. (Council referral dated 10/15/2019, and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Section 19)</li> </ul>	19
3.	<p><b>Stand-Alone Beer and Wine.</b> Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Council referral dated 10/15/2019 and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> <li>Expanded Bar/Cocktail Lounge/Tavern use type to include “Tap Room/Wine Tasting.” (Sections 3, 13 and 21)</li> <li>Revised permit requirements. (Section 3)</li> </ul>	3 8 13 21
4.	<p><b>Alcoholic Beverage Sales Standards.</b> Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section</p>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Sections 18 and 19)</li> </ul>	18 19

	<b>Policy Change</b>	<b>Proposed Zoning Change</b>	<b>Ordinance Sections (Attachments 1 and 3)</b>
	23.310.030(C). (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> <li>Revised Findings of Public Convenience or Necessity. (Section 18)</li> </ul>	
5.	<b>Hours of Operation.</b> Modify hours and days of operations in commercial districts. (Council referral dated 10/15/2019).	<ul style="list-style-type: none"> <li>Amended district purpose for C-SO District. (Section 9)</li> <li>Revised Hours of Operation. (Section 14)</li> <li>Clarified exceptions. (Section 14)</li> <li>Established that an AUP, not a Use Permit Modification, is required to extend hours to match this change. (Section 14)</li> <li>Conforming technical edit. (Section 9)</li> </ul>	9 14
6.	<b>Change of Use.</b> Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	<ul style="list-style-type: none"> <li>Removed additional permit requirements related to change of use. (Sections 3 and 4)</li> </ul>	3 4
7.	<b>ATMs.</b> Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> <li>No recommended changes.</li> </ul>	N/A

<b>STAFF-INITIATED CHANGES CONSISTENT WITH CITY COUNCIL REFERRALS</b>			
8.	<b>Office, Business and Professional; Art/Craft Studio; Pet Stores.</b>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Section 3)</li> </ul>	3

	<ul style="list-style-type: none"> <li>• Allow Office, Business and Professional uses with a ZC in the C-NS and C-T zoning districts.</li> <li>• Allow Art/Craft Studios with a ZC in all commercial zoning districts.</li> <li>• 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.</li> </ul>		
<p>9.</p>	<p><b>Live Entertainment.</b> 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>	<ul style="list-style-type: none"> <li>• Added Live Entertainment as incidental use in the R-SMU districts. (Section 1)</li> <li>• Added “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” as land uses in the residential, commercial and manufacturing Allowed Uses Tables. (Section 3)</li> <li>• Removed stand-alone section. (Section 13 and 15)</li> </ul>	<p>1 3 13 15</p>

10.	<p><b>Seated Food Service Requirement.</b> Allow distilled alcoholic beverage service without seated food service in the C-T, C-NS, and the C-SO zoning districts.</p>	<ul style="list-style-type: none"> <li>Removed requirement that food service must accompany distilled alcohol service. (Sections 8 and 19)</li> </ul>	8 19
11.	<p><b>Food Service Establishments 3,000 sq. ft or less.</b> 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 service is not included.</p>	<ul style="list-style-type: none"> <li>Added new “Food Service Establishments” uses to Residential and Commercial Allowed Use tables and removed stand-alone section. (Sections 1, 3 and 16)</li> <li>Removed AUP requirement for food service on ground floor in C-DMU. (Section 10)</li> </ul>	1 3 10 16
12.	<p><b>Food Service Establishment Quota.</b> Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.</p>	<ul style="list-style-type: none"> <li>Removed numeric quota. (Section 5)</li> </ul>	5
13.	<p><b>Incidental Food Service Establishment Requirements.</b> Permit incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors with an AUP, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.</p>	<ul style="list-style-type: none"> <li>Added new “Food Service Establishment” incidental uses to Manufacturing Allowed Use Table and removed stand-alone code section. (Sections 13 and 16)</li> </ul>	13 16

14.	<b>Drug Paraphernalia in C-T District.</b> Allow retail sales of drug paraphernalia in the C-T zoning district.	<ul style="list-style-type: none"> <li>Removed prohibition on uses involving sale or distribution of drug paraphernalia in C-T. (Section 8)</li> </ul>	8
15.	<b>Third Party Rental.</b> Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.	<ul style="list-style-type: none"> <li>Removed restriction. (section 19)</li> </ul>	19

*Discussion of Proposed Changes*

Items 1 through 7 in the list below were considered pursuant to City Council referrals in 2018 and 2019.

*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. Currently, most commercial zoning districts require an AUP for group class instruction. 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 Instruction uses with a ZC in all commercial zoning districts, except:
  - An AUP would be required for Group Instruction uses 3,000 square feet or larger in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), and Solano Avenue (C-SO) zoning districts. The Planning Commission wished to maintain a higher level of discretion for larger Group Instruction uses in smaller commercial districts.
- Allow Health and Fitness Facility uses with a ZC in all commercial zoning districts, except:
- Require an AUP for Health and Fitness Facility uses 7,500 square feet or larger in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), and Solano Avenue (C-SO) zoning districts. The Planning Commission

wished to maintain a higher level of discretion for larger Health and Fitness Facilities uses in smaller commercial districts.

*Revise Definitions Related to Group Class Instruction* - The BMC currently includes three related use types (Group Class Instruction, Art Classes/Studios/Dance/Martial Arts Studios, and Gym/Health Club) that share some overlapping uses (exercise classes, for example, appear in both Group Class Instruction and Gym/Health Club). This has led to confusion as to how to classify a proposed use or accommodate emerging business models. The proposed zoning amendments consolidate and refine these definitions, as shown in Table 2.

**Table 2: Existing and Proposed Group Class Instruction & Related Definitions**

Existing Definitions	Proposed Definitions
<p><b>Dance / Exercise / Martial Arts / Music Studio.</b> 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><b>Group Instruction.</b> An establishment that offers specialized programs in personal growth, development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance.</p>
<p><b>Group Class Instruction.</b> 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><b>Gyms and Health Clubs.</b> 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><b>Health and Fitness Facility.</b> An indoor facility where exercise equipment, group classes and other activities related to personal health and fitness are available to customers or members. This can include a facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to personal health and fitness are available to customers or members. Excludes: park/playground.</p>

Dance, exercise and aerobics are proposed to be captured in the definition of “Health and Fitness Facility.” “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 Instruction.”<sup>1</sup> Note that the definition and permit requirements for a “Commercial Recreation Center” remain unchanged, which permit activities and uses that include indoor rock climbing, bowling alleys, bingo parlors, skating rinks, billiard or pool halls, miniature golf courses and axe throwing.

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 with an AUP subject to performance standards. The proposed changes are included in Table 3, 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 3: 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, <del>except C-AC and the R-BMU District</del>	ZC	<u>UP(PH) AUP</u>
<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,

<sup>1</sup> 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 taught in a home.

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 in the above listed districts.

#### 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 standards for Alcoholic Beverage Sales and Service in BMC 23.310.020 and BMC 23.310.030.<sup>2</sup> These changes include revised findings for public convenience and necessity that provide updated standards consistent with ABC requirements 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.
- 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 23958.4<sup>3</sup> and current 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

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<sup>2</sup> Special Use Standards for Alcoholic Beverage Sales were first established in 1999 and revised in 2008, 2009, 2010, 2011, 2014, and 2019.

<sup>3</sup> California State Code, Business and Professions 23958.4.  
[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC)

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. Furthermore, additional language has been added to the standard conditions of approval to increase safety and improve authentic identification verification.

*Revise Alcoholic Beverage Sales General Requirements, Alcoholic Beverage Service When Incidental to Food Service.* BMC Section 23.310.030(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.
- 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 4. Controls related to both noise and alcohol sales would remain in effect with the adoption of the changes articulated in Table 3.<sup>4</sup> While 24 hour a day operation would be allowed in the C-

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<sup>4</sup> 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),

DMU and C-T zoning districts for commercial uses, no alcohol service use would be permitted to continue past 2:00 a.m.<sup>5</sup>

**Table 4: Hours of Operation – Proposed Amendments**

District	Allowed Hours of Operation	Permit Required to Extend Hours
C-C, C-U, <del>C-NS, C-AC, C-W nodes</del>	<del>7:00 a.m.–12:00 midnight 6:00 a.m.–2:00 a.m.</del>	AUP
C-N, C-E, <del>C-NS</del> , C-SO, C-SA, C-W outside nodes, <del>MU-R</del>	<del>7:00 a.m.–11:00 p.m. 6:00 a.m.–12:00 midnight</del>	UP <del>AUP</del>
<del>C-W nodes</del>	<del>6:00 a.m.–12:00 midnight with Zoning Certificate</del>	UP
<del>C-SA</del>	<del>7:00 a.m.–12:00 midnight Sundays through Thursdays 7:00 a.m.–12:00 Fridays and Saturday</del>	UP
<del>C-AC</del>	<del>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.</del>	UP
<del>C-T between Bancroft Way and the north side of Dwight Way, C-DMU</del>	24 hours per day, 7 days a week	N/A
<del>C-T between the south side of Dwight Way and Parker Street</del>	<del>7:00 a.m.–12:00 midnight</del>	<del>AUP</del>
<del>C-DMU</del>	<del>6:00 a.m. and 2:00 a.m.</del>	<del>AUP</del>
<del>MU-R</del>	<del>6:00 a.m.–10:00 p.m.</del>	<del>AUP</del>

The proposed amendments 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.

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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).

<sup>5</sup> California 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.

## 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 and existing legislation, staff determined this is a low priority and there are no revisions included in the proposed amendments related to ATMs.

Items 8 through 14 below were advanced by Office of Economic Development (OED) staff in response to changing business conditions, research and community engagement. Some of these modifications, particularly number 8, were refined through outreach and engagement, particularly with the Planning Commission and its small business zoning subcommittee.

## 8. Office, Business and Professional; Art/Craft Studios; Pet Stores.

*Allow Office, Business and Professional uses with a ZC in the C-NS and C-T zoning districts.* Currently, Office, Business and Professional uses require an AUP in the C-NS and C-T zoning districts. The proposed zoning changes revise this requirement to a ZC. The Planning Commission wished to maintain a higher level of discretion for Office, Business and Professional uses in the smaller C-SO, C-E, and C-N zoning

districts and have indicated keeping the AUP requirement is more appropriate in those areas.

*Allow 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. 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 5.*

**TABLE 5: OFFICE; BUSINESS AND PROFESSIONAL; ART/CRAFT STUDIOS; PET STORES – PROPOSED AMENDMENTS**

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

**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, R-SMU, 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.”*

Live entertainment, as either a primary or incidental use, is currently not permitted in any residential zoning district. The R-SMU, however, with its relatively dense and mixed-use character, and geographic limitation within the student-oriented Southside Plan Area, is considered an appropriate zoning district in which to permit live entertainment as an incidental use. The proposed changes would allow unamplified

Live Entertainment with a ZC and permit amplified Live Entertainment with an AUP, as summarized in Table 6.

**TABLE 6: 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, <u>C-N, C-NS, C-W, C-E, MU-LI, MU-R</u>	ZC	AUP
<u>R-SMU</u>	<u>Not Permitted ZC</u>	<u>Not Permitted AUP</u>
<u>C-N, C-NS, C-W</u>	<u>ZC</u>	<u>UP(PH)</u>
<u>C-E</u>	<u>ZC</u>	<u>Not Permitted</u>
<u>MU-LI, MU-R</u>	<u>UP(PH)</u>	<u>UP(PH)</u>

**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, only 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. Under this requirement, business operators must include food service in order to sell and serve distilled alcohol. 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.

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, which would continue to retain this requirement.

**11. Food Service Establishments**

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, 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 the R-SMU 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 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 and limits on food establishment uses (see 12, below).

*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 food service operations, the proposed zoning amendments would remove the restriction on renting restaurant space to a third party.

## 12. Elmwood 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.<sup>6</sup> All other quotas throughout the City were eliminated in 2016, after an evaluation of the quota program citywide.<sup>7</sup> Future changes to the quota system in the Elmwood were to be brought to Council after further consultation with the Elmwood Business Association.<sup>8</sup> 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 Business Association on April 21, 2023 and the Elmwood Business

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<sup>6</sup> Berkeleyside, <https://www.berkeleyside.org/2012/01/17/elmwood-business-quotas-may-change-to-help-startups>, January 17, 2012.

<sup>7</sup> 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.

<sup>8</sup> Ibid, page 3 of 76.

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—i.e., Food Service Establishment uses that are co-located with a primarily permitted use—are permitted in select manufacturing (or “M-prefixed”) 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 (i.e. “to-go”) in the MM District.

The AUP permit requirement for **indoor** 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. 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.

*Existing Permitted Land Uses & Proposed Zoning Ordinance Amendments*

As a result of some of the above proposed zoning amendments, there may be existing uses that, either as a result of previous zoning regulations or specific conditions of approval, would now find themselves subject to more restrictive regulations than new uses in the same zoning district established after the adoption of the proposed zoning amendments. For example, currently in the C-U zoning district, commercial hours of operation end at midnight. Accordingly, an existing business’s approval was premised on ending business at midnight. Under the proposed zoning amendments, however, commercial hours of operation in the C-U zoning district would end at 2:00 a.m. A new business would therefore be allowed to operate two hours longer than an existing business. Currently, adjusting the existing business’ commercial hours of operation would require a permit modification (BMC 23.404.070), which requires a public hearing.

To remedy this scenario and others like it, the revised ordinance includes new language in three sections to modify the process for modifying an existing land use approval to be consistent with the new regulations included in the proposed ordinance. In each case, an AUP is required to modify an approval, which includes public notice and an option to appeal an initial decision, as well as providing the City an opportunity to include conditions of approval, if necessary.

Authorization to modify existing approvals with an AUP is found in the proposed ordinance's revised language for Hours of Operation (BMC 23.302.020(B); Section 14 of **Attachment 1**); General Requirements for Alcohol Beverage Sale and Service (BMC 23.301.020(B); Section 18 of **Attachment 1**); and regulations regarding Alcoholic Beverage Service When Incidental to Food Service (BMC 23.302.030(A); Section 19 of **Attachment 1**).

#### *Miscellaneous Technical Edits*

The proposed zoning amendments also include the following technical amendments and corrections unrelated to the amendments to support small businesses:

- *C-SA Text Amendments:* With the adoption of the Adeline Corridor Specific Plan, a number of parcels that were previously included in the C-SA zoning district were rezoned to C-AC. Section 23.204.100 (C-SA zoning district) still includes provisions related to alcoholic beverage sales and service that pertain only to those formerly C-SA parcels (see Section 6 in **Attachments 1 and 3**). The proposed zoning amendments include the removal of those provisions from the C-SA zoning district regulations.

*C-SA Height Provisions:* The C-SA zoning district includes two different building height standards, which are applied to parcels based on their location. Currently, there are parcels that are zoned C-SA that do not have a building height standard assigned to them. The proposed zoning amendments include revisions to the C-SA Maximum Building Heights Table and accompanying map to provide a building height standard for all C-SA zoned parcels (see Section 7 in **Attachments 1 and 3**).

- *Use Category Titles:* Section 12 of the proposed ordinance includes the correct use category titles for Retail Uses, Person and Housing Services Uses and Food and Alcohol Service, Lodging, Entertainment and Assembly Uses.
- *Family Day Care:* SB 234 (2019) requires cities to consider all family day care homes for up to 14 children, operating under the standards defined by state law, a residential use and prohibits the local requirement of a business license. Earlier this year, the City Council adopted amendments to the Residential Allowed Use Table to reflect these requirements, but the requirement for a ZC still remains in the allowed use tables for commercial and manufacturing districts. The proposed

ordinance includes removal of Family Day Care permit requirements from the commercial and manufacturing use tables, consistent with State requirements.

- *Restaurant Uses:* As a result of previous amendments, there are no longer any regulations that pertain to Carry Out Food Stores, Quick Service Restaurants and Full-Service Restaurants. To eliminate confusion, the proposed zoning amendments include removal of the definitions for these restaurant types from the Glossary and a reference in another section.
- *Formatting Changes:* The proposed ordinance simplifies and improves usability of the Zoning Ordinance by consolidating information into fewer sections and tables.

### BACKGROUND

The Zoning Ordinance has evolved over many decades to reflect Berkeley's changing values and the dynamic 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.

As noted in the June 7, 2023 Planning Commission report, OED staff consulted with external stakeholders including business services personnel, small business proprietors and operators, and business district networks, as well as City staff including the Community Services Bureau of the Berkeley Police Department, Code Enforcement, and Environmental Health. This collaborative effort also enabled the identification of enhancements in internal city processes and implementation efforts that align with the Council referrals from 2018 and 2019. Some work has already taken place in response to those referrals, including the creation a Coordinated Sign Design program by Council in November 2022.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Small businesses contribute to sustainable transportation and consumer behavior by providing opportunities to shop in commercial districts that are accessible by foot, bicycle and transit. The continued pursuit of environmental sustainability goals, as well as the programs and policies that encourage that pursuit, represents an economic strength for Berkeley and a competitive advantage of the City and the region.

The proposed ordinance includes revisions to permit and other requirements for specified land uses. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment and does not qualify as a "project" under the California Environmental Quality Act (CEQA) and further environmental review is not required.

RATIONALE FOR RECOMMENDATION

The goal of these Zoning Ordinance amendments is to simplify and streamline 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. Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's fiscal, social and civic wellbeing.

ALTERNATIVE ACTIONS CONSIDERED

The June 7, 2023 Planning Commission report included a set of recommendations and alternative suggestions for a number of the proposed policy changes, including different permit requirements, differently-worded definitions and alternative approaches to formatting and organization. Ultimately through the work of the subcommittee and wider discussion(s) with the Planning Commission, some of these suggestions were abandoned and others were workshopped into the recommendations presented in this report, to address the goals of City Council's referrals.

CONTACT PERSON

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Attachments:

- 1: Ordinance.
- 2: Planning Commission Staff Report, October 14, 2023.
- 3: Annotated Ordinance.
- 4: City Council referral to support small business, Oct. 15, 2019.
- 5: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS CHAPTER (BMC 23.302), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), NONCONFORMING USES, STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324) AND THE GLOSSARY CHAPTER (BMC 23.502) TO SUPPORT BERKELEY BUSINESSES

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

**Section 1.** That the lines named “Alcoholic Beverage Service,” “Food Service Establishment” “Group Class Instruction,” and “Gym/Health Club” in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020 are amended, and lines named “Food Service Establishment, Under 3,000 sq. ft.,” “Food Service Establishment, 3,000 sq. ft. or larger,” and a new Incidental Use use category with “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” are added, to read:

Table 23.202-1: Allowed Land Uses in Residential Districts

	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU**		
ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply **--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D													
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)* ZC*	UP(PH)*	23.310—Alcoholic Beverage Sales and Service	
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	23.302.070.E—Use-Specific Regulations	
Food Service Establishment, Under 3,000 sq. ft.	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	ZC*	23.302.070(E) – Use-Specific Regulations	
Food Service Establishment, 3,000 sq. ft. or larger	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP*	AUP*	23.302.070(E) – Use-Specific Regulations	
Group Class Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150.(C) R-BMU Residential BART Mixed Use District	
Gym/Health and Fitness Facility Club	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150.(C) R-BMU Residential BART Mixed Use District	
<b>Incidental Uses</b>													

<u>Live Entertainment, Unamplified</u>	<u>NP</u>	<u>ZC</u>	<u>NP</u>									
<u>Live Entertainment, Amplified</u>	<u>NP</u>	<u>AUP</u>	<u>NP</u>									

**Section 2.** That Berkeley Municipal Code 23.202.150(C)(2) is amended to read:

2. Group ~~Class~~-Instruction and Gym/Health Club and Fitness Facility. Group ~~class~~ instruction and gym/health club and fitness facility uses are permitted at the Ashby BART station with a Zoning Certificate. Group ~~class~~-instruction and gym/health club and fitness facility uses are permitted at the North Berkeley BART station with a Use Permit.

**Section 3.** That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” “Alcoholic Beverage Retail Sale,” “Pet Store,” “Retail General,” “Personal and Household Services, General,” “Laundromats and Cleaners,” “Video Tape/Disk Rental,” “Business Support Services,” “Bank and Financial Services, Retail,” “Insurance Agents, Title Companies, Real Estate Agents, Travel Agents,” “Medical Practitioners,” “Non-Chartered Financial Institutions,” “Office, Business and Professional,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Gym/Health Club,” “Alternative Fuel Station,” “Large Vehicle Sales and Rental,” “Small Vehicle Sales and Rental,” “Vehicle Parts Store,” “Vehicle Rentals,” “Vehicle Repair and Service,” “Vehicle Sales, New,” “Vehicle Sales, Used,” “Cannabis Testing,” “Light Manufacturing,” “Wholesale Trade,” “Food and Beverage for Immediate Consumption,” “Food Service Establishment,” “Live Entertainment,” “Retail Sale of Goods Manufactured On-Site,” “Art/Craft Studio,” “Public Market, Enclosed” and the Notes in Table 23.204-1 Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, are amended, and lines named “Group Instruction, 3,000 sq. ft. or larger,” “Food Service Establishment, Under 3,000 sq. ft.” “Food Service Establishment, 3,000 sq. ft. or larger” “Health and Fitness Facility, Under 7,500 sq. ft.” “Health and Fitness Facility, 7,500 sq. ft.” “Live Entertainment, Unamplified,” and “Live Entertainment, Amplified,” are added, to read:

**Table 23.204-1 Allowed Uses in the Commercial Districts**

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
<u>Family Day Care Home, Large</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	
<u>Family Day Care, Small</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B-2 23.310
Pet Store	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	<del>AUP</del> <del>UP(PH)</del>	ZC [3]	<del>AUP</del> <del>UP(PH)</del>	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC* [1]	ZC*	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.(C)-E (for department stores)  23.204.040(D)-F (for drug stores)
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	--	ZC	ZC [2]	ZC	ZC [5]	NP	
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	23.204.110.(B)-6 (4)
Bank and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.(B)-(64); 23.204.130.(B)-(6); 23.204.130.(D)-(3)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	23.204.040.D(B); 23.204.110.(B)-6 (4); 23.204.130.(D)-(3)
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.D(B); 23.204.110.(B)-6 (4); 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.(B)-6 (4)
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	<del>AUP</del> <del>ZC*</del>	ZC [1]	<del>AUP</del> <del>ZC*</del>	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.(B); 23.204.110.(B)-6 (4); 23.204.130.(D)-(3)
Bar/Cocktail Lounge/Tavern/ Tap Room/Wine Tasting	<del>UP(PH)</del> <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	-- <del>AUP</del> *	NP <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	NP <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	<del>UP(PH)</del> <del>AUP</del> *	23.204.100.B-3 23.204.110.B-2; 23.310
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Food Service Establishment, under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.302.070.(E)
Food Service Establishment,	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	23.302.070.(E)

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
<u>3,000 sq. ft. or larger</u>	*	*	*	*	*	*	*	*	*	*	*	
Group <del>Class-Instruction,</del> <u>Under 3,000 sq. ft.</u>	ZC [1]	ZC [1]	AUP ZC	AUP ZC	AUP ZC	ZC [1]	ZC	AUP ZC	ZC	ZC	ZC	23.204.040-B
<u>Group Instruction, 3,000 sq. ft. or larger</u>	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
<u>Health and Fitness Facility, Under 7,500 sq. ft.</u>	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
<u>Health and Fitness Facility, 7,500 sq. ft. or larger</u>	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
<u>Gym/Health Club</u>	See 23.204.040-G											
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP*	UP(PH)	23.204.110-(B)-(4) (2) 23.204.140-(B)-(3)
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	23.204.140-(B)-(3)
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100-(B)-(5) (3); 23.204.140-(B)-(3)
Vehicle Parts Store	ZC [1]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	NP	AUP* [81]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140-(B)-(3)
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140-(B)-(3)
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100-(B)-(5) (3); 23.204.140-(B)-(3); 23.204.140-(D)-(4)
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [81]	NP	
Light Manufacturing	-	-	-	-	-	-	-	-	-	AUP [81]	--	
Wholesale Trade	-	-	-	-	--	-	-	-	-	AUP [81]	--	
<b>Incidental Uses</b>												
Food and Beverage for Immediate Consumption	ZC	ZC	AUP ZC	UP(PH) ZC	UP(PH) ZC	ZC	AUP ZC	UP(PH) ZC	ZC	ZC	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Food Service Establishment	See 23.302.070-E											
Food Service Establishment, Under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.310.030
Food Service Establishment, 3,000 sq. ft. or larger	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.310.030
Live Entertainment, Unamplified	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Live Entertainment, Amplified	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Live Entertainment	See 23.302.070-E											
Retail Sale of Goods Manufactured On-Site	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	AUP ZC	ZC	
Art/Craft Studio	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	ZC [6]	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [92]	AUP	
Notes: [1]— Change of use of floor area over 3,000 square feet requires an AUP. [2]— Change of use of floor area over 2,000 square feet requires an AUP. [3]— Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. [4]— Requires a Use Permit if 5,000 sq. ft. or more. [5]— Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. [6]— Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. [7]— Requires a Use Permit if 7,500 square feet or more. [8][1] Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. [9][2] Requires a Use Permit if more than 10,000 sq. ft.												

Section 4. That Berkeley Municipal Code 23.204.040(B) through (F) be amended, to read:

**~~B. Group Class Instruction.~~**

- ~~1. C-NS and C-DMU Districts. When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage, storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.~~

- 2. ~~C-NS District.~~ Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- 3. ~~C-T District.~~ Group class instruction uses in the C-T district are not permitted on the ground floor.

**C. Gyms and Health Clubs**

1. ~~Permits Required.~~ Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

**Table 23.204-5: Gym/Health Club/Fitness Studio Permit Requirements**

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
<del>C-C, C-U, C-DMU</del>	
<del>Under 7,500 sq. ft</del>	<del>ZC</del>
<del>7,500 sq. ft. and greater</del>	<del>AUP</del>
<del>C-N, C-E, C-NS, C-SO</del>	<del>AUP</del>
<del>C-SA, C-T, C-AC</del>	<del>ZC</del>
<del>C-W</del>	
<del>Under 7,500 sq. ft</del>	<del>ZC</del>
<del>7,500 sq. ft. and greater</del>	<del>UP(PH)</del>
<p>Note:                      [1] Change of use permit requirements as described in Section 23.204.030.A – Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

2. ~~C-DMU District.~~ When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**DB. Transparency Requirement for Office Uses.** When office uses shown in Table 23.204-6: Office Uses Subject to Transparency Requirement are located on the ground floor adjacent to a street frontage, storefront windows shall either:

- 1. Include a storefront window display; or

2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**Table 23.204-6: Office Uses Subject to Transparency Requirement**

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

**EC. Department Stores.** Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

**Table 23.204-7: Department Store Permit Requirements**

DISTRICT/USE SIZE	PERMIT REQUIRED <del>[1]</del>
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	
ZC	
C-AC	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	<del>UP(PH)AUP</del>
<p><b>Note:</b>  <del>[1] Change of use permit requirements as described in Section 23.204.030.A Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</del></p>	

**FD. Drugstores.** The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

- 1. Where Prohibited.** A new or expanded drugstore is not permitted if it is:
- a. Over 5,000 square feet in gross floor area; and
  - b. Within 1,000 feet of any property containing an existing drugstore.

**2. Measurement of Distance.** Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

Section 5. That Berkeley Municipal Code 23.204.080(B)(2) be amended to read:

**2. Numerical and Size Limitations.**

- a. Table 23.20420 shows land uses subject to ~~numerical and~~ size limitations in the C-E district.

**TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS**

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
<del>Food Service Establishments [1]</del>	<del>25 total</del>	<del>No max.</del>	<del>AUP</del>
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC
<p><b>Notes:</b>  <del>[1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.</del>  <del>Change of use of over 3,000 square feet requires Use Permit</del></p>			

- b. The ZAB may allow a use to exceed the limitations in Table 23.20420 with a Use Permit upon finding that:
  - i. The use will result in the positive enhancement of the purposes of the district; and
  - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

Section 6. That Berkeley Municipal Code 23.204.100(B) be amended to read:

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts

~~2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.~~

~~3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.~~

**42 Mixed-Use Permits Required.**

a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:

- i. Complies with all applicable standards in Table 23.20427, Table 23.20428, and Table 23.20429;
- ii. Includes only residential uses above the ground floor; and
- iii. Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.

b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100-(E)— C-SA South Area Commercial District (Permit Findings).

**53. Vehicle Sales.**

a. **Applicability.**

- i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
- ii. All new or relocated vehicle sales in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.
- iii. Expansions or modifications of existing vehicle sales are:
  1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
  2. Shall not increase or exacerbate a non-conformity with these standards.

b. **Standards.**

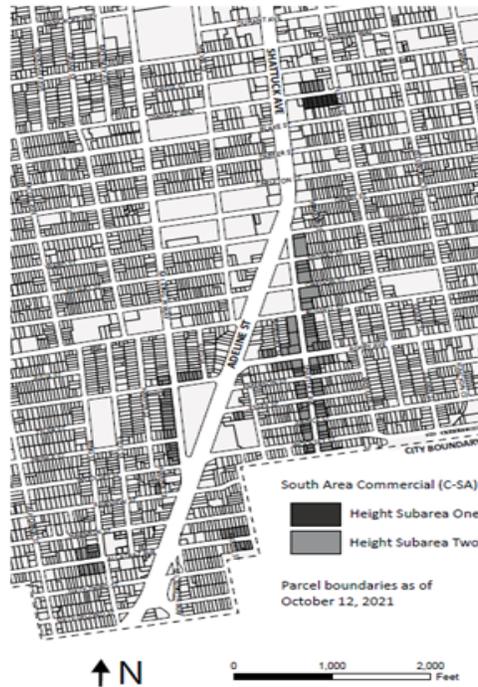
- i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
  - ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;
  - iii. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.
  - iv. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
  - v. **Repair Activities.** All vehicle repair activities shall be conducted indoors.
  - vi. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.
  - vii. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.
  - vii. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.
- c. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
- i. Is necessary to facilitate incorporation of an existing structure;
  - ii. Achieve greater consistency with the surrounding street pattern;
  - iii. Buffers impacts to an adjacent residential district; or
  - iv. Is needed to accommodate dealership operations.

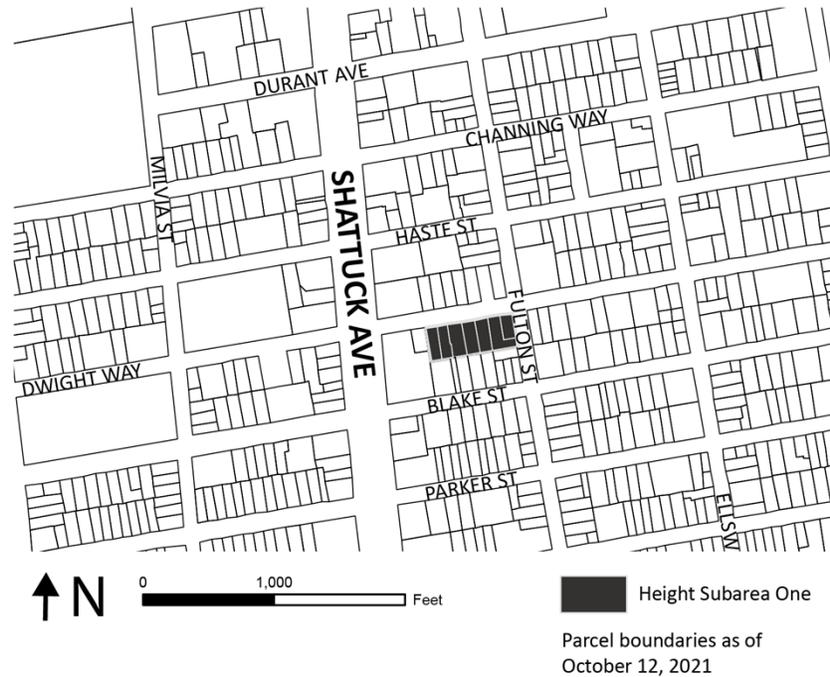
Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

Table 23.204-28. C-SA Maximum Building Heights

Building Land Use	Maximum Height	
	Subarea <del>1</del> <u>One</u>	Subarea <del>2</del> <u>All other parcels</u>
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.		

Figure 23.204-3. C-SA Building Height Sub-~~Area~~area One





Section 8. That Berkeley Municipal Code 23.204.110(B) be amended to read:

**B. Allowed Land Uses.**

1. **General.** See Table 23.2041: Allowed Uses in the Commercial Districts.

~~2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.~~

~~3. **Drug Paraphrenalia Stores.** Any use involving the sale or distribution of drug paraphrenalia is not permitted in the C-T district.~~

~~42. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.~~

**3. Residential Use, Ground Floor.** Residential uses are permitted on the ground floor where located behind a commercial use. The ground floor commercial use must meet the following standards:

- a. Occupy a minimum 30-foot depth of the ground floor, as measured from the ground floor street frontage, and
- b. Occupy the full extent of the building frontage, excluding required utilities, driveways, pedestrian access and residential lobby.

~~64. **Office Uses.**~~

a. Table 23.204-31 shows permits required for office uses in the C-T district.

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:

- i. Include a window display; or
- ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**75. Upper Story Uses.**

- a. Floor area above the ground floor may be occupied only by a residential or office uses.
- b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
  - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
  - ii. Does not exceed the ground-floor area of the use.

Section 9. That Berkeley Municipal Code 23.204.120(A)(2)(e) be amended to read:

- e. Encourage location of ~~late night~~late-night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a ~~11:00 p.m.~~12:00 midnight closing time for businesses on Solano Avenue; and

Section 10. That Berkeley Municipal Code 23.204.130(D)(3) be amended to read:

**3. Use Limitations; Findings.** ~~Food service establishments and offices~~Offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that

- (a) The project meets the purposes of the Arts Overlay District as set forth above; and

- (b) The location, size, type, appearance, and signage of the proposed use will:
- i. Animate and enhance the pedestrian experience on the street; and
  - ii. Be generally open to the public evenings and on weekends, whenever practicable.

Section 11. That Berkeley Municipal Code 23.204.130(E)(7)(a)(iv) be amended to read:

iv. ~~Gym/Health and Fitness Facility Club~~

Section 12. That Berkeley Municipal Code 23.204.150(B)(3)(b) be amended to read:

**b. Active Commercial Uses Defined.** Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: ~~Retail~~ Retail Uses Sales; Personal and Household Services Uses; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail~~s~~, and Vehicle Parts Stores.

Section 13. That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Group Class Instruction,” “Gym/Health Club,” and “Food and Beverage for Immediate Consumption,” in Table 23.206-1 Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, are amended, and lines named “Food Service Establishment, Under 5,000 sq. ft.” “Food Service Establishment, 5,000 sq. ft. or larger,” “Food Service Establishment, Under 20,000 sq. ft.” “Food Service Establishment, 20,000 sq. ft. or larger” “Live Entertainment, Unamplified” and :Live Entertainment, Amplified” are added, to read:

**TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS**

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
<del>Family Day Care Home, Large</del>	NP	NP	ZC*	AUP*	23.206.040.C
<del>Family Day Care Home, Small</del>	NP	NP	ZC*	ZC*	23.206.040.C

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Bar/Cocktail Lounge/Tavern/ <u>Tap Room/Wine Tasting</u>	NP	NP	NP	See 23.306	
<u>Dance/Exercise/Martial Arts/Music Studio</u>	NP	NP	--	UP(PH)	
<u>Food Service Establishment</u>	See 23.302.070.E				
<u>Food Service Establishment, Under 5,000 sq. ft</u>	--	--	AUP*	AUP*	23.302.070(E)
<u>Food Service Establishment, 5,000 sq. ft. larger</u>	--	--	UP(PH)*	UP(PH)*	23.302.070(E)
Group <u>Class-Instruction</u>	NPZC	NPZC	---	UP(PH)ZC	
<u>Gym/Health and Fitness Facility Club</u>	NP	NP	--	NP	
<b>Incidental Uses</b>					
<u>Food and Beverage for Immediate Consumption</u>	--	AUP [2]	--	--	
<u>Food Service Establishment</u>	AUP [2]	--	AUP [2]	AUP	
<u>Food Service Establishment, Under 20,000 sq. ft</u>	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
<u>Food Service Establishment, 20,000 sq. ft. larger</u>	NP	AUP*	NP	AUP*	23.302.070(E)
<u>Live Entertainment</u>	NP	NP	UP(PH)*	UP(PH)*	23.302.020.D
<u>Live Entertainment, Unamplified</u>	NP	NP	ZC	ZC	
<u>Live Entertainment, Amplified</u>	NP	NP	AUP	AUP	

Section 14. That Berkeley Municipal Code 23.302.020(B) be amended to read:

**B. Hours of Operation.**

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district, unless otherwise restricted by an existing permit.

**2. Hours of Operation Defined.**

a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.

a. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:

i. The delivery, maintenance, security, product preparation and other pre-opening activities, and

ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

2.3. **Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1. If more restrictive hours of operation than what is permitted in Table 23.302-1 are imposed as a condition of approval on an existing AUP or UP, the hours may be modified within the district's current limits with approval of an AUP regardless of the original review authority.

**Table 23.302-1: Allowed Hours of Operation**

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, <del>C-NS, C-AC, C-W</del> nodes	7:00 a.m. — 12:00 midnight 6:00 a.m. — 2:00 a.m.	AUP
C-N, C-E, <del>C-NS, C-SO, C-SA, C-W</del> outside nodes, <del>MU-R</del>	7:00 a.m. — 11:00 p.m. 6:00 a.m. — 12:00 midnight	<del>UP</del> AUP
<del>C-W</del> nodes	6:00 a.m. — 12:00 midnight with Zoning Certificate	<del>UP</del>
<del>C-SA</del>	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 12:00 Fridays and Saturday	<del>UP</del>
<del>C-AG</del>	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 2:00 a.m. Fridays and Saturday	<del>UP</del>

C-T, <del>C-DMU between Bancroft Way and the north side of Dwight Way</del>	24 hours per day 7 days a week	N/A
<del>C-T between the south side of Dwight Way and Parker Street</del>	<del>7:00 a.m.—12:00 midnight</del>	<del>AUP</del>
<del>C-DMU</del>	<del>6:00 a.m. and 2:00 a.m.</del>	<del>AUP</del>
<del>MU-R</del>	<del>6:00 a.m. and 10:00 p.m.</del>	<del>AUP</del>

**24. Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, ~~traffic or parking problems~~ affecting the well-being of the residents of the district.

~~3. C-T District Findings. The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.~~

~~4. Hours of Operation Defined.~~

~~a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.~~

~~b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron.~~

~~These limitations do not apply to:~~

~~— The delivery, maintenance, security, product preparation and other pre-opening activities, and~~

~~— Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.~~

~~For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.~~

Section 15. That Berkeley Municipal Code 23.302.020(D) be removed and that Berkeley Municipal Code 23.302.020(E) be amended to read:

~~D. Live Entertainment -- Permits Required.~~ Live entertainment incidental to a permitted use is allowed as shown in Table 23.302-2.

**Table 23.302-2: Permit Requirements for Live Entertainment**

ZONES	PERMIT REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC	AUP	ZC
C-N, C-NS, C-W	UP(PH)	ZC
C-E	Not Permitted	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

**1. Allowed Activities.**

a. ~~In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.~~

b. ~~In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.~~

**ED. Outdoor Uses.**

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
  - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
  - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.** Table 23.302-2 Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.
- ~~3. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.~~

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC
20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes:	
[1] Size is measured as the lot area of the outdoor activity or storage	
[2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

**54. C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.

**65. M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

Section 16. That Berkeley Municipal Code 23.302.070(E) be amended to read:

**E. Food Service Establishments.**

~~1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.~~

2. ~~Permits Required in Commercial Districts and in the R-BMU.~~ 6 shows permits required for food service establishments in the commercial districts and in the R-BMU.

**Table 23.302-6: Permit Requirements for Food Service Establishments**

DISTRICT/USE SIZE	PERMIT REQUIRED
<del>C-C, C-U, C-T, C-W</del>	
<del>Under 1,500 sq. ft</del>	<del>ZC</del>
<del>1,500 sq. ft. or more</del>	<del>AUP</del>
<del>C-N, C-NS, C-SA, C-SO</del>	
<del>Under 1,000 sq. ft</del>	<del>ZC</del>
<del>1,000 sq. ft. or more</del>	<del>AUP</del>
<del>C-AC, South Shattuck and North Adeline Subareas</del>	
<del>3,000 sq ft or less</del>	<del>ZC</del>
<del>Over 3,000 sq ft</del>	<del>AUP</del>
<del>C-AC, South Adeline Subarea</del>	
<del>1,500 sq ft or less</del>	<del>ZC</del>
<del>Over 1,500 sq ft</del>	<del>AUP</del>
<del>R-BMU, North Berkeley BART Station</del>	<del>UP(PH)</del>
<del>C-E</del>	<del>AUP [1]</del>
<del>C-DMU</del>	
<del>Under 3,000 sq. ft outside the Arts District Overlay</del>	<del>ZC</del>
<del>3,000 sq. ft. or more</del>	<del>AUP</del>
<del>Any size within the Arts District Overlay</del>	<del>AUP [2]</del>
Notes:	
[10]—All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store.	
[11]—See 23.204.130.D.3 for required findings.	

3. ~~Notification of Decision.~~ Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

4. ~~Carry Out Limitations in C-U District.~~ Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any

~~location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.~~

~~5.1.~~ **Outdoor Cafe Seating.**

a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:

- i. Zoning Certificate when seating does not abut a residential district.
- ii. AUP when seating abuts a residential district.

~~b. Outdoor seating is not permitted for food service establishments in the MU-LI District.~~

~~c.b.~~ Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

~~6.2.~~ **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

~~7.3.~~ **C-W District Requirements.**

a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.

~~b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:~~

~~i. The project does not conflict with the goals and policies of the C-W district;~~

~~ii. The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;~~

~~iii. The project supports pedestrian-oriented development;~~

~~iv. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and~~

~~v. For projects which include construction of new buildings, the project design:~~

~~1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;~~

~~2. Provides pedestrian scale and siting; and~~

~~3. Incorporates continuity in street facades.~~

~~8. Permits Required in Manufacturing Districts. Table 23.3028 shows permits required for food service establishments in the manufacturing districts.~~

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS**

USE TYPE AND SIZE	DISTRICT			
	M	MM	MU-LI	MU-R
<b>Incidental Use</b>				
Under 20,000 sq. ft.	AUP [1]	AUP [1,2]	AUP [1]	AUP [1]
20,000 sq. ft. or more	-	-	-	AUP
<b>Carry-Out Food Service (Primary Use)</b>				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
<b>Quick-Service Restaurant (Primary Use)</b>				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
<b>Full-Service Restaurant (Primary Use)</b>				
	-	-	UP	UP
<b>Notes:</b>				
[12]—Outdoor food service is not permitted.				
[13]—Limited to food or beverage for immediate consumption.				

**9.4. MU-LI and MU-R District – Findings.**

- a. To approve an AUP ~~or Use Permit~~ to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. ~~To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.~~

Section 17. That Berkeley Municipal Code 23.302.070(G) and (H) be amended to read:

**G. Parking Lot/Structure.**

~~1. Permits Required.~~

2.1. **Permits Required.** Table 23.302-9-7 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

**TABLE 23.302-97: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

DISTRICT	PERMIT REQUIRED
<b>Residential Districts</b>	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
<b>Commercial Districts</b>	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
<b>Manufacturing Districts</b>	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.

Notes:

[1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area

~~3.2.~~ **Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

**H. Residential Use, Ground-Floor Units.**

1. Southside Plan Area. In the R-3, R-S, R-SMU, and C-T districts within the Southside Plan boundaries, individual unit entries located within six feet of the front property line shall be at least 18 inches above the finished grade of the adjacent public frontage.

I. **Senior Congregate Housing.** Table 23.302-~~10-8~~ shows permits required for senior congregate housing.

**TABLE 23.302-~~108~~: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING**

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

Section 18. That Berkeley Municipal Code 23.310.020 be amended to read:

**A. Applicability.**

1. This section applies to any application to begin ~~or increase~~ alcoholic beverage sales or service, excluding ~~beer and wine~~alcoholic beverage service incidental to a food service establishment ~~in a Commercial District~~ (see 23.310.030 (Alcoholic Beverage Service When Incidental to a Food Service)).

~~2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:~~

~~a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;~~

~~b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and~~

~~c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.~~

~~3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.~~

**B. Permit Required.** ~~A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.~~

~~1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).~~

~~4.2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority.~~

**C. Application – List of Nearby Establishments.** ~~As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.~~

**DC. Findings of Public Convenience or Necessity.** ~~To approve a permit for alcoholic beverage sales or service, the decision-making body must make the following findings: If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application~~

~~1. The number of alcoholic beverage sales licensees in the census tract does not exceed the limit set by the Department of Alcoholic Beverage Control, as defined in California Business and Professions Code Section 23958.4, excluding Food Service Establishments with incidental alcohol service; and~~

~~4.2. At least one of the following: only if it makes all of the following findings:~~

~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~b. c. The applicant has operated a licensed establishment that has not been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley, as verified by the Police Department, such violations do not indicate a high likelihood of further~~

~~violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB decision-making body may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.~~

~~4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.~~

~~3. If the number of alcoholic beverage sales licenses in the census tract exceeds the limit set by the Department of Alcoholic Beverage Control; the decision-making body must find that the public convenience or necessity would be served by approving alcohol sales at the proposed location for any two or more of the following reasons:~~

~~a. The proposed establishment will promote the City’s economic health, contribute to General Plan or area plan policies, or further the purposes of the district.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~c. The sale of alcoholic beverages will enhance recreational or entertainment opportunities in the area.~~

~~d. The sale of alcoholic beverages complements the sale of other goods and merchandise at the location.~~

~~e. The issuance of a license at the proposed location will improve the convenience of area residents and visitors who purchase alcoholic beverages.~~

~~4. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.~~

Section 19. That Berkeley Municipal Code 23.310.030 be amended to read:

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment. If more restrictive requirements than what is permitted in Table 23.310-1 are imposed as a condition of approval on an existing AUP or UP, the use may be modified with an AUP regardless of the original review authority.

**Table 23.310--1: Permits Required for Alcoholic Beverage Service**

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)

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>
All Commercial Districts, <del>except C-AC and the R-BMU District</del>	ZC	UP(PH), <u>AUP</u>
<del>C-AC</del>	<del>ZC</del>	<del>AUP</del>
MU-LI, MU-R	<u>UP(PH), <u>AUP</u></u>	<u>UP(PH), <u>AUP</u></u>

**B. Use Limitations.**

- ~~1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.~~
- ~~2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.~~
- ~~3. **C-NS and R-BMU Districts.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry-out food stores and quick-service restaurants.~~
- ~~4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.~~
- ~~5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.~~

**CB. Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment, ~~in a Commercial District.~~

**1. Licensing.**

- a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.

**2. Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcoholic Beverage Control.
- c. The sale of beer and wine for off-site consumption is not permitted.
- ~~d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.~~
- ~~e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.~~
- ~~f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.~~
- ~~g.d.~~ Hours of operation are subject to review and amendment by the review authority ~~Zoning Officer or the ZAB~~ as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

### 3. Operation.

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During operating the food service establishment's hours of operation, ~~400 percent of the service~~ all customer accessible areas shall be ~~designed and used~~ available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- ~~d. At no time shall the operator rent the restaurant space to a third party.~~
- ~~e.d.~~ The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
  - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and

ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.

~~f.e.~~ The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

~~g.f.~~ The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

#### 4. Advertising.

~~a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement. Establishments shall comply with Municipal Code Chapter 20.67 (Alcohol Product Advertising)~~

~~b. Alcohol dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.~~

#### 5. Training.

a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.

b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

Section 20. That Berkeley Municipal Code 23.324.040(B)(2)(b) be amended to read:

b. **Uses with Major Investments.** Lawful nonconforming ~~full or quick service restaurants~~ food services establishments with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

i. Such fixed structures, equipment, or facilities are removed; or

- ii. Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.

Section 21. That Berkeley Municipal Code 23.502.020(B)(4) be amended to read:

- 4. **Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is ~~only~~ incidental to the consumption of such beverages.

Section 22. That Berkeley Municipal Code 23.502.020(D) be amended to read:

D. **“D” Terms.**

~~1. **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.~~

2.1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.

3.2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.

4.3. **Density.** See 23.106.100 - Residential Density

5.4. **Density Bonus.** See 23.332.020 (Definitions).

6.5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.

7.6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.

8.7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).

- ~~9.8.~~ **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
- ~~10.9.~~ **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
- ~~11.10.~~ **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
- ~~12.11.~~ **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
- ~~13.12.~~ **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
- ~~14.13.~~ **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
- ~~15.14.~~ **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
- ~~16.15.~~ **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

Section 23. That Berkeley Municipal Code 23.502.020(F) (11) be amended to read:

**11. Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

~~**a. Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on-premises dining. Examples of this use include~~

~~delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.~~

~~**b. Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on-premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.~~

~~**c. Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is stored, cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining, and may provide with table service (waiters).~~

Section 24. That Berkeley Municipal Code 23.502.020(G)(6) be amended to read:

~~6. **Group Class Instruction.** An establishment that offers specialized programs in personal growth, and development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.~~

Section 25. That Berkeley Municipal Code 23.502.020(G)(9) be removed:

~~9. **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.~~

Section 26. That Berkeley Municipal Code 23.502.020(H)(2) – (11) be amended to read:

~~2. **Health and Fitness Facility.** A facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to person health and fitness are available to customers or members. Excludes park/playground.~~

- 23. Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.
- 34. Height of Building, Average.** See 23.106.090.A (Average Building Height).
- 45. Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).
- 56. Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

- (1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
  - (2) Class II Home Occupation--Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
  - (3) Class III Home Occupation--Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.
- 67. Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
- 78. Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
- 89. Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
- 910. Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days.

This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.

**4011. Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.

**4412. Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:

- (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
- (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
- (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

Section 27. That Berkeley Municipal Code 23.502.020(S)(31) be amended to read:

31. **Studio.** See Art/Craft Studio ~~and Dance, Exercise, Martial Arts or Music Studio.~~

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Planning and Development Department  
Land Use Planning Division

STAFF REPORT  
October 4, 2023

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Zoning Amendments for Berkeley Business Public Hearing

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### RECOMMENDATION

Planning Commission is asked to hold a public hearing, receive and provide comment on the proposed Zoning Amendments for Berkeley Business (“proposed zoning amendments”), and make a recommendation for consideration by the City Council.

### SUMMARY

In response to City Council referrals and recommendations from the Planning Commission’s Zoning Amendments for Berkeley Business Subcommittee, staff from the Office of Economic Development (OED) and the Land Use Planning Division (LUP) are proposing zoning amendments (**Attachment 1**) targeted at supporting businesses, particularly small businesses with fewer than 50 employees, in commercial, manufacturing and the Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU) zoning districts.

On June 7, 2023, the Planning Commission heard a presentation and held a discussion on proposed policy changes and zoning amendments (**Attachment 2**). At that meeting, the Planning Commission appointed a Subcommittee, which met on June 28, 2023 and August 23, 2023, to review the draft proposed ordinance in detail. The proposed ordinance is included as **Attachment 1** to this report. The policy rationale for each of these zoning amendments is discussed at length in the June 7, 2023 Planning Commission staff report. Changes made subsequent to the June 7, 2023 Planning Commission meeting are discussed in detail below.

### FISCAL IMPACTS OF RECOMMENDATION

As noted in the June 7, 2023 Planning Commission report, 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 dynamic 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 has observed a specific challenge encountered by small, independent enterprises—the intricate path of maneuvering through the permit review procedure, and associated timelines and financial implications.

In order to better accommodate today's small, independent enterprises, OED staff propose a series of amendments. While they would apply to businesses of all sizes, these proposed zoning amendments aim to establish a streamlined, cost-effective, and expedited process tailored to smaller businesses. 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

As detailed in the June 7, 2023 Planning Commission report, the proposed zoning amendments reflect policy changes that are summarized in Table 1 Referral Actions and Zoning Amendment Proposals. The first six proposed zoning amendments reflect specific referred actions from City Council, while the second set of eight proposed zoning amendments reflect staff-initiated changes that are consistent with the direction and intent of City Council referrals. Table 1 also includes a column which indicates which Section(s) of the proposed ordinance (**Attachment 1**) include changes related to the indicated referral actions. **Attachment 1** also includes comment bubbles for each Section of the proposed ordinance to indicate which of the items in Table 1 are referred to therein.

**Table 1 Referral Actions and Zoning Amendment Proposals**

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
<b>CITY COUNCIL REFERRALS</b>			
1.	<p><b>Group Class Instruction.</b> Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Council 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>	<ul style="list-style-type: none"> <li>Removed “Dance/Exercise /Martial Arts/Music Studio” use and revised the definition of “Group Class Instruction” (simplified to “Group Instruction”) to include it. (Section 23)</li> <li>Replaced “Gyms and Health Clubs” use with new “Health and Fitness Facility” use and definition. (Section 25)</li> <li>Changed permit requirements and size thresholds. (Sections 1, 2 and 3)</li> <li>Removed ground floor transparency requirement for gyms in the C-DMU, for customer privacy. (Section 4)</li> <li>Conforming technical edits, e.g. renumbering and references.</li> </ul>	<p>1 2 3 4 11 13 22 24 25 26 27</p>
2.	<p><b>Incidental Distilled Spirits.</b> 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. (Council referral dated 10/15/2019, and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Section 18)</li> </ul>	<p>19</p>
3.	<p><b>Stand-Alone Beer and Wine.</b> Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Council referral dated 10/15/2019 and Council referral dated 12/4/2018)</p>	<ul style="list-style-type: none"> <li>Expanded Bar/Cocktail Lounge/Tavern use type to include “Tap Room/Wine Tasting.” (Sections 3, 12 and 20)</li> <li>Revised permit requirements. (Section 3)</li> </ul>	<p>3 13 21</p>
4.	<p><b>Alcoholic Beverage Sales Standards.</b> Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C). (Council referral dated 10/15/2019)</p>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Sections 17 and 18)</li> </ul>	<p>18 19</p>

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		<ul style="list-style-type: none"> <li>Revised Findings of Public Convenience or Necessity. (Section 17)</li> </ul>	
5.	<b>Hours of Operation.</b> Modify hours and days of operations in commercial districts. (Council referral dated 10/15/2019).	<ul style="list-style-type: none"> <li>Amended district purpose for C-SO District. (Section 8)</li> <li>Revised Hours of Operation. (Section 13)</li> <li>Clarified exceptions. (Section 13)</li> <li>Establish that an AUP, not a Use Permit Modification, is required to extend hours to match this change. (Section 13)</li> <li>Conforming technical edit. (Section 8)</li> </ul>	9 14
6.	<b>Change of Use.</b> Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	<ul style="list-style-type: none"> <li>Removed additional permit requirements related to change of use. (Sections 3 and 4)</li> </ul>	3 4
7.	<b>ATMs.</b> Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Council referral dated 10/15/2019)	<ul style="list-style-type: none"> <li>No recommended changes.</li> </ul>	N/A
<b>STAFF-INITIATED CHANGES CONSISTENT WITH CITY COUNCIL REFERRALS</b>			
8.	<b>Office, Business and Professional; Art/Craft Studio; Pet Stores.</b> <ul style="list-style-type: none"> <li>Allow Office, Business and Professional uses with a ZC in the C-N, C-E, C-NS, C-T and C-SO zoning districts;</li> <li>Allow Art/Craft Studios with a ZC in all commercial zoning districts; and</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Revised permit requirements. (Section 3)</li> </ul>	3
9.	<b>Live Entertainment.</b> 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.	<ul style="list-style-type: none"> <li>Added Live Entertainment as incidental use in the R-SMU districts. (Section 1)</li> <li>Added "Live Entertainment, Unamplified" and "Live</li> </ul>	1 3 13 15

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachment 1)
		<p>Entertainment, Amplified” as their land uses in the residential, commercial and manufacturing Allowed Uses Tables. (Section 3)</p> <ul style="list-style-type: none"> <li>Removed stand-alone section. (Section 12 and 14)</li> </ul>	
10.	<p><b>Seated Food Service Requirement.</b> Allow distilled alcoholic beverage service without seated food service in the C-T, C-NS, and the C-SO zoning districts.</p>	<ul style="list-style-type: none"> <li>Removed requirement that food service must accompany distilled alcohol service. (Sections 7 and 18)</li> </ul>	8 19
11.	<p><b>Food Service Establishments 3,000 sq. ft or less.</b> 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>	<ul style="list-style-type: none"> <li>Added new “Food Service Establishments” uses to Residential and Commercial Allowed Use tables and removed stand-alone section. (Sections 1, 3 and 15)</li> <li>Removed requirement that food service on ground floor in C-DMU requires an AUP. (Section 9)</li> </ul>	1 3 10 16
12.	<p><b>Food Service Establishment Quota.</b> Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.</p>	<ul style="list-style-type: none"> <li>Removed numeric quota. (Section 5)</li> </ul>	5
13.	<p><b>Incidental Food Service Establishment Requirements.</b> Permit incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors with an AUP, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.</p>	<ul style="list-style-type: none"> <li>Added new “Food Service Establishment” incidental uses to Manufacturing Allowed Use Table and removed stand-alone section. (Sections 12 and 15)</li> </ul>	13 16
14.	<p><b>Drug Paraphernalia in C-T District.</b> Allow retail sales of drug paraphernalia in the C-T zoning district.</p>	<ul style="list-style-type: none"> <li>Removed prohibition on uses involving sale or distribution of drug paraphernalia in C-T. (Section 7)</li> </ul>	8
15.	<p><b>Third Party Rental</b> Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.</p>	<ul style="list-style-type: none"> <li>Removed restriction. (section 18)</li> </ul>	19

### *Changes Subsequent to June 7, 2023 Planning Commission*

The June 7, 2023 Planning Commission staff report included detailed discussion of the referral actions and rationales for the proposed zoning changes. Subsequent to that meeting, revised recommendations from the Zoning Amendments for Berkeley Business Subcommittee and from project planning, policy planning, and Office of Economic Development staff have been incorporated into the proposed ordinance. Those changes are summarized below.

*1. Group Class Instruction:* The BMC includes three related use types (Group Class Instruction, Art Classes/Studios/Dance/ Martial Arts Studios, and Gym/Health Club) that share some overlapping uses (exercise classes, for example, appear in both Group Class Instruction and Gym/Health Club). This has led to some confusion as to how to classify a proposed use. The June 7, 2023 Planning Commission report included revisions to the definitions of each of three related uses to make each one distinct and to clarify how a proposed use should be classified. The report also proposed an alternative approach: consolidating the definitions and creating fewer use types.

The proposed zoning amendments include a consolidation of the three use types into two use types (Group Instruction and Health and Fitness Facility) and provides definitions that expand and clarify what types of uses are to be considered under each use type.

- **Single Land Use Alternative:** An alternative approach is to consolidate the two proposed use types (“Group Instruction” and “Health and Fitness”) into one single land use, called “Group Activity.” As a result of other changes included in the proposed ordinance, the permit requirements for Group Instruction and Health and Fitness Facility are the same across all commercial districts. It may not be necessary to distinguish between the two use types if they are regulated similarly. However, the two uses are regulated differently in the M, MM, and MU-R zoning districts: Group Instruction is permitted with a ZC, while Health and Fitness uses are not permitted.

In addition, the June 7, 2023 Planning Commission report included permitting Group Class Instruction in any commercial zoning district with a ZC. Currently, Group Class Instruction uses require an AUP in smaller neighborhood commercial districts (C-N, C-E and C-SO zoning districts). The proposed ordinance includes a revision requiring an AUP for *larger* Group Instruction uses (3,000 sq. ft. or larger) in the C-N, C-E and C-SO zoning districts, while permitting smaller uses with a ZC.

2. *Revised Levels of Permit Discretion for Office, Business and Professional:* The June 7, 2023 Planning Commission report included a revision to the Allowed Use Table which permitted Office, Business and Professional uses in all commercial zoning districts with a ZC.

In discussing this item, Subcommittee members expressed a concern that making Office, Business and Professional uses easier to establish in smaller neighborhood commercial districts could make it difficult for neighborhood-serving retail to compete in these more discrete areas. Currently, Office, Business and Professional uses require an AUP in smaller neighborhood commercial districts (C-N, C-E and C-SO zoning districts). The proposed ordinance includes a revision that maintains this AUP requirement for Office, Business and Professional use in these three smaller neighborhood commercial zoning districts.

3. *Live Entertainment.* The June 7, 2023 Planning Commission report included revisions to BMC Section 23.302.020 to make it easier for live entertainment to be approved as an incidental use in commercial zoning districts and in the MU-LI and MU-R zoning districts.

The proposed ordinance includes an additional revision permitting live entertainment as an incidental use in the R-SMU district. Live entertainment, as either a primary or incidental use, is currently not permitted in any residential zoning district. The R-SMU, however, with its relatively dense and mixed-use character, and geographic limitation within the student-oriented Southside Plan Area, was considered an appropriate zoning district in which to permit live entertainment as an incidental use.

4. *Structural/Formatting Changes.* Currently, for some uses, the residential, commercial and manufacturing allowed use tables do not contain information about required permits for certain use types; instead, users are instructed to find this permit-related information in other sections or tables of the BMC.

Where appropriate, the proposed ordinance eliminates these references and additional tables, and includes required permit distinctions directly within the allowed use tables themselves. The intent is to simplify the ordinance, remove extraneous language, and to make it easier for users to locate the required permit(s).

- Food Service Establishments: Currently, Food Service Establishment is a single use, and users need to go elsewhere in the BMC to learn about permit distinctions based on project size. The proposed ordinance removes the extra section and instead includes two use types, based on size, directly in the Allowed Use Tables (Food Service Establishment, Under 3,000 sq. ft. and Food Service Establishment, 3,000 sq. ft. or larger).

- Live Entertainment: Currently, a user must consult a separate section of the BMC for permit requirements related to unamplified and amplified live entertainment. The proposed ordinance removes the extra section and instead includes two use types directly in the Allowed Use Tables (Live Entertainment, Unamplified and Live Entertainment, Amplified). This revision also includes the addition of an Incidental Use category within the Residential Allowed Use Table.
- Group Instruction and Health and Fitness Facility: Currently, a user must consult a separate section of the BMC for permit requirements related to the size and location of Gym/Health Club/Fitness uses. The proposed ordinance removes the extra section and instead includes size-based distinctions in the Allowed Use Tables (Group Instruction, Under 3,000 sq. ft.; Group Instruction, 3,000 sq. ft. or larger; Health and Fitness Facility, Under 7,500 sq. ft.; and Health and Fitness Facility, 7,500 sq. ft. or larger).

5. *Technical Changes.* The proposed zoning amendments also include five technical amendments: two related to the C-SA zoning district, one that corrects use category titles, and two related to restaurant uses.

- C-SA District:
  1. With the adoption of the Adeline Corridor Specific Plan, a number of parcels that were previously included in the C-SA zoning district were rezoned to C-AC. Section 23.204.100 (C-SA zoning district) still includes provisions that pertain only to those formerly C-SA parcels. The proposed zoning amendments include the removal of those provisions from the C-SA zoning district regulations.
  2. The C-SA zoning district includes two different building height standards, which are applied to parcels based on their location. Currently, there are parcels that are zoned C-SA that do not have a building height standard assigned to them. The proposed zoning amendments include revisions to the C-SA Maximum Building Heights Table and accompanying map to provide a building height standard for all C-SA zoned parcels.
- Use Category Titles: Section 12 of **Attachment 1** includes the correct use category titles for Retail Uses, Person and Housing Services Uses and Food and Alcohol Service, Lodging, Entertainment and Assembly Uses.
- Restaurant Uses: As a result of previous amendments, there are no longer any regulations that pertain to Carry Out Food Stores, Quick Service Restaurants and Full-Service Restaurants. To eliminate confusion, the proposed zoning amendments include removal of the definitions for these restaurant types from the Glossary and a reference in another section.

### *Existing Land Uses and the Proposed Zoning Ordinance Amendments*

As a result of some of the proposed zoning ordinance amendments, there may be existing uses that, either as a result of previous zoning regulations or specific conditions of approval, would be subject to more restrictive regulations than new uses in the same zoning district that would be established after the adoption of the proposed zoning amendments.

For example, currently in the C-U zoning district, commercial hours of operation end at midnight. Accordingly, an existing business' approval was premised on ending business at midnight. Under the proposed zoning changes, however, commercial hours of operation in the C-U zoning district would end at 2:00 a.m. A new business would therefore be allowed to operate two hours longer than an existing business. Currently, adjusting the existing business' commercial hours of operation would require a permit modification (BMC 23.404.070), which requires a public hearing.

The revised ordinance includes new language in three sections to modify the process for modifying an existing land use approval to be consistent with the new regulations included in the proposed ordinance. In each case, an AUP is required to modify an approval, which includes public notice and an option to appeal an initial decision, as well as providing the city an opportunity to include conditions of approval, if necessary.

Authorization to modify existing approvals with an AUP is found in the proposed ordinance's revised language for Hours of Operation (BMC 23.302.020(B); Section 13 of **Attachment 1**); General Requirements for Alcohol Beverage Sale and Service (BMC 23.301.020(B); Section 17 of **Attachment 1**); and regulations regarding Alcoholic Beverage Service When Incidental to Food Service (BMC 23.302.030(A); Section 18 of **Attachment 1**).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

#### Environmental Review Status

The proposed ordinance includes revisions to permit and other requirements for specified land uses to encourage economic development. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment.

California Public Resource Code Section 21065 defines a "project" under CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed ordinance includes revisions to permit and other requirements for specified land uses to encourage economic development. It does not include allowing any uses currently not permitted that would be anticipated to have a significant effect on the environment. The proposed ordinance does not consist of a discretionary action that would permit or

cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA, and further environmental review is not required.

#### RATIONALE FOR RECOMMENDATION

The proposed zoning amendments aim to provide a more straightforward, cost-effective, and efficient process for businesses in their establishment or expansion phases. As noted in the June 7, 2023 Planning Commission report, OED staff consulted with business services personnel, small business proprietors and operators, as well as the Community Services Bureau of the Berkeley Police Department, along with code enforcement staff from the Zoning, Neighborhood Services, and Environmental Health Divisions. This collaborative effort enabled the identification of enhancements in processes and implementations that align with Council referrals.

At its June 7, 2023 meeting, the Planning Commission expressed support for the proposed zoning amendments' general direction. Consequently, a Subcommittee was convened to offer further analysis and a detailed review of the proposed ordinance. The Subcommittee conducted that review and suggested a select number of changes that have been incorporated into the proposed ordinance.

#### ALTERNATIVE ACTIONS CONSIDERED

As noted above, the June 7, 2023 Planning Commission report included a set of recommendations and alternative suggestions for a number of the proposed policy changes, including different permit requirements, differently-worded definitions and alternative approaches to formatting and organization.

#### NEXT STEPS

Upon a recommendation from the Planning Commission, the City Council will conduct a public hearing on the proposed ordinance. The proposed zoning amendments would be effective 30 days after the second reading of the ordinance by the City Council.

#### CONTACT PERSON

Kieron Slaughter, Chief Strategist, Economic Innovation, Office of Economic Development, 510-981-2490

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

#### Attachments:

1. Ordinance
2. June 7, 2023 Planning Commission report and attachments
3. Public Hearing Notice

#### Referenced Council Referrals:

1. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager Williams-Ridley, 12/4/18)
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager Williams-Ridley, 10/15/19)

ATTACHMENT 3

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS CHAPTER (BMC 23.302), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), NONCONFORMING USES, STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324) AND THE GLOSSARY CHAPTER (BMC 23.502) TO SUPPORT BERKELEY BUSINESSES

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

**Section 1.** That the lines named “Alcoholic Beverage Service,” “Food Service Establishment” “Group Class Instruction,” and “Gym/Health Club” in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020 are amended, and lines named “Food Service Establishment, Under 3,000 sq. ft.,” “Food Service Establishment, 3,000 sq. ft. or larger,” and a new Incidental Use use category with “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” are added, to read:

**Commented [HJ1]:** 1. Group Class Instruction  
9. Live Entertainment  
11. Food Service Establishments 3,000 sq. ft. or less

Table 23.202-1: Allowed Land Uses in Residential Districts

	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU		
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) <sup>*</sup> ZC <sup>*</sup>	UP(PH) <sup>*</sup>	23.310—Alcoholic Beverage Sales and Service
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) <sup>*</sup> ZC <sup>*</sup>	UP(PH) <sup>*</sup>	23.302.070.E—Use-Specific Regulations
Food Service Establishment, Under 3,000 sq. ft.	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC <sup>*</sup>	ZC <sup>*</sup>	23.302.070(E) – Use-Specific Regulations
Food Service Establishment, 3,000 sq. ft. or larger	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP <sup>*</sup>	AUP <sup>*</sup>	23.302.070(E) – Use-Specific Regulations
Group Class-Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) <sup>*</sup>	23.202.150.(C) R-BMU Residential BART Mixed Use District
Gym/Health and Fitness Facility/Club	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH) <sup>*</sup>	23.202.150.(C) R-BMU Residential BART Mixed Use District
<b>Incidental Uses</b>													

ZC = Zoning Certificate  
AUP = ADMINISTRATIVE USE PERMIT  
UP(PH) = Use Permit  
NP = Not Permitted  
\* Use-Specific Regulations Apply  
\*\*--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D

Live Entertainment, Unamplified	NP	ZC	NP										
Live Entertainment, Amplified	NP	AUP	NP										

Section 2. That Berkeley Municipal Code 23.202.150(C)(2) is amended to read:

Commented [HJ2]: 1. Group Class Instruction

2. Group ~~Class~~ Instruction and ~~Gym/Health Club~~ and ~~Fitness Facility~~. Group ~~class~~ instruction and ~~gym/health club and fitness facility~~ uses are permitted at the Ashby BART station with a Zoning Certificate. Group ~~class~~ instruction and ~~gym/health club and fitness facility~~ uses are permitted at the North Berkeley BART station with a Use Permit.

Section 3. That the lines named “~~Family Day Care Home, Large,~~” “~~Family Day Care Home, Small,~~” “Alcoholic Beverage Retail Sale,” “Pet Store,” “Retail General,” “Personal and Household Services, General,” “Laundromats and Cleaners,” “Video Tape/Disk Rental,” “Business Support Services,” “Bank and Financial Services, Retail,” “Insurance Agents, Title Companies, Real Estate Agents, Travel Agents,” “Medical Practitioners,” “Non-Chartered Financial Institutions,” “Office, Business and Professional,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Gym/Health Club,” “Alternative Fuel Station,” “Large Vehicle Sales and Rental,” “Small Vehicle Sales and Rental,” “Vehicle Parts Store,” “Vehicle Rentals,” “Vehicle Repair and Service,” “Vehicle Sales, New,” “Vehicle Sales, Used,” “Cannabis Testing,” “Light Manufacturing,” “Wholesale Trade,” “Food and Beverage for Immediate Consumption,” “Food Service Establishment,” “Live Entertainment,” “Retail Sale of Goods Manufactured On-Site,” “Art/Craft Studio,” “Public Market, Enclosed” and the Notes in Table 23.204-1 Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, are amended, and lines named “Group Instruction, 3,000 sq. ft. or larger,” “Food Service Establishment, Under 3,000 sq. ft.” “Food Service Establishment, 3,000 sq. ft. or larger” “Health and Fitness Facility, Under 7,500 sq. ft.,” “Health and Fitness Facility, 7,500 sq. ft.” “Live Entertainment, Unamplified,” and “Live Entertainment, Amplified,” are added, to read:

Commented [HJ3]: 1. Group Class Instruction  
 3. Stand-Alone Beer and Wine  
 6. Change of Use  
 8. Office, Business & Professional. Art/Craft Studio, Pet Store  
 9. Live Entertainment  
 11. Food Service Establishments 3,000 sq. ft. or less  
**TECHNICAL CHANGE** related to Family Day Care Homes

Table 23.204-1 Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted - = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Family Day Care, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B.2 23.310
Pet Store	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	AUP UP(PH)	ZC [3]	AUP UP(PH)	
Retail, General	ZC [4]	ZC [4]	ZC* [2]	ZC* [2]	ZC* [2]	ZC* [4]	ZC* [1]	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.(C).E (for department stores)  23.204.040.(D).F (for drug stores)
Personal and Household Services, General	ZC [4]	ZC [4]	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Video Tape/Disk Rental	ZC [4]	ZC [4]	ZC [2]	AUP	ZC [2]	--	ZC	ZC [2]	ZC	ZC [5]	NP	
Business Support Services	ZC [4]	ZC [4]	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	23.204.110.(B).6 [4]
Bank and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [4]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.(B).6 [4]; 23.204.130.(B).6 [3]; 23.204.130.(D).3 [3]
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [4]	ZC [4]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [4]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	23.204.040.(D).B); 23.204.110.(B).6 [4]; 23.204.130.(D).3 [3]
Medical Practitioners	ZC [4]	ZC [4]	AUP	NP	UP(PH)	ZC [4]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.(D).B); 23.204.110.(B).6 [4]; 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.B.64
Office, Business and Professional	ZC [4]	ZC [4]	AUP*	AUP*	AUP ZC*	ZC [4]	AUP ZC*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.64; 23.204.130.D.3
Bar/Cocktail Lounge/Tavern/ Tap Room/Wine Tasting	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	-- AUP*	NPA UP*	UP(PH) AUP*	UP(PH) AUP*	NP AUP*	UP(PH) AUP*	UP(PH) AUP*	UP(PH) AUP*	23.204.100.B.3 23.204.110.B.2; 23.310
Dance/Exercise/Martial Arts/Music Studio	ZC [4]	ZC [4]	ZC [2]	AUP	AUP [4]	ZC [4]	ZC	AUP	ZC	ZC [7]	ZC	
Food Service Establishment, under	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.302.070.E

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
3,000 sq. ft.												
Food Service Establishment, 3,000 sq. ft. or larger	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	AUP *	23.302.070.E
Group Class Instruction, Under 3,000 sq. ft.	ZC [4]	ZC [4]	AUP ZC	AUP ZC	AUP ZC	ZC [4]	ZC	AUP ZC	ZC	ZC	ZC	23.204.040.B
Group Instruction, 3,000 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
Health and Fitness Facility, Under 7,500 sq. ft.	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Health and Fitness Facility, 7,500 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
Gym/Health Club	See 23.204.040.C											
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP*	UP(PH)	23.204.110(B);4(2) 23.204.140(B);(3)
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	23.204.140(B);(3)
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100(B);5(3); 23.204.140(B);(3)
Vehicle Parts Store	ZC [4]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	NP	AUP* [81]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140(B);(3)
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [81]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [81]	NP	23.204.140(B);(3)
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100(B);5(3); 23.204.140(B);(3); 23.204.140(D);4
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [81]	NP	
Light Manufacturing	-	-	-	-	-	-	-	-	-	AUP [81]	-	
Wholesale Trade	-	-	-	-	-	-	-	-	-	AUP [81]	-	
<b>Incidental Uses</b>												
Food and Beverage for Immediate Consumption	ZC	ZC	AUP ZC	UP(PH) ZC	UP(PH) ZC	ZC	AUP ZC	UP(PH) ZC	ZC	ZC	ZC	

Commented [HJ4]: Instead of using a table in section 23.204.040, we made new land uses here, for ease of use.

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Food Service Establishment	See 23.302.070.E											
Food Service Establishment, Under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.310.030
Food Service Establishment, 3,000 sq. ft. or larger	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.310.030
Live Entertainment, Unamplified	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Live Entertainment, Amplified	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Live Entertainment	See 23.302.070.E											
Retail Sale of Goods Manufactured On-Site	ZC [4]	ZC [4]	ZC [2]	ZC [2]	ZC [2]	ZC [4]	ZC	ZC [2]	ZC	AUP ZC	ZC	
Art/Craft Studio	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	AUP ZC	ZC [6]	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [92]	AUP	
Notes: [1] Change of use of floor area over 3,000 square feet requires an AUP. [2] Change of use of floor area over 2,000 square feet requires an AUP. [3] Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. [4] Requires a Use Permit if 5,000 sq. ft. or more. [5] Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. [6] Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. [7] Requires a Use Permit if 7,500 square feet or more. [9][1] Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. [9][2] Requires a Use Permit if more than 10,000 sq. ft.												

Commented [HJ5]: Instead of using a table in section 23.302.070, we made new land uses here, for ease of use.

Section 4. That Berkeley Municipal Code 23.204.040(B) through (F) be amended, to read:

Commented [HJ6]: 1. Group Class Instruction 6. Change of Use

**B. Group Class Instruction.**

- ~~1. C-NS and C-DMU Districts. When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage,~~

storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

2. **C-NS District.** Group class instruction uses in the C-NS may not exceed 2,500 square feet.
3. **C-T District.** Group class instruction uses in the C-T district are not permitted on the ground floor.

**C. Gyms and Health Clubs**

**1. Permits Required.** Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

**Commented [HJ7]:** Created new use (Health and Fitness Facility) and moved permit requirements to Commercial Allowed Uses Table (Section 3, above), so we can get rid of this table. New definition in Glossary, below (Section 25)

**Table 23.204-5: Gym/Health Club/Fitness Studio Permit Requirements**

DISTRICT/USE SIZE	PERMIT REQUIRED [1]
<b>C-C, C-U, C-DMU</b>	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	AUP
<b>C-N, C-E, C-NS, C-SO</b>	
C-SA, C-T, C-AC	ZC
<b>C-W</b>	
Under 7,500 sq. ft	ZC
7,500 sq. ft. and greater	-UP(PH)
<p>Note:                      [1] Change of use permit requirements as described in Section 23.204.030.A – Additional Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p>	

**2. C-DMU District.** When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**DB. Transparency Requirement for Office Uses.** When office uses shown in [Table 23.204-6: Office Uses Subject to Transparency Requirement](#) are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**Table 23.204-6: Office Uses Subject to Transparency Requirement**

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

**EC. Department Stores.** Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

**Table 23.204-7: Department Store Permit Requirements**

DISTRICT/USE SIZE	PERMIT REQUIRED <sup>[1]</sup>
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	ZC
C-AC	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	<del>UP(PH)</del> AUP

**Note:**

~~[1] Change of use permit requirements as described in Section 23.204.030.A Additional~~

Permit Requirements (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.

**FD. Drugstores.** The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

**1. Where Prohibited.** A new or expanded drugstore is not permitted if it is:

- a. Over 5,000 square feet in gross floor area; and
- b. Within 1,000 feet of any property containing an existing drugstore.

**2. Measurement of Distance.** Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

Section 5. That Berkeley Municipal Code 23.204.080(B)(2) be amended to read:

Commented [HJ8]: 12. Food Service Establishment Quota (C-E)

**2. Numerical and Size Limitations.**

- a. Table 23.204-20 shows land uses subject to ~~numerical and~~ size limitations in the C-E district.

**TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS**

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
Food Service Establishments [1]	25 total	No max.	AUP
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC

**Notes:**  
 [1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.  
 Change of use of over 3,000 square feet requires Use Permit

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
  - i. The use will result in the positive enhancement of the purposes of the district; and
  - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

Section 6. That Berkeley Municipal Code 23.204.100(B) be amended to read:

**Commented [HJ9]:** TECHNICAL CHANGE to C-SA: many C-SA parcels were rezoned to C-AC when the Adeline Plan was adopted. Due to that rezoning, there are no longer areas within the C-SA zoning district that meet these conditions (there are now all C-AC).

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts

~~2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.~~

~~3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.~~

**42 Mixed-Use Permits Required.**

- a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:
  - i. Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;
  - ii. Includes only residential uses above the ground floor; and
  - iii. Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.
- b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100-(E)— C-SA South Area Commercial District (Permit Findings).

~~53. **Vehicle Sales.**~~

- a. **Applicability.**

i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.

ii. All new or relocated vehicle sales in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.

iii. Expansions or modifications of existing vehicle sales are:

1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
2. Shall not increase or exacerbate a non-conformity with these standards.

**b. Standards.**

i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.

ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;

iii. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

iv. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.

v. **Repair Activities.** All vehicle repair activities shall be conducted indoors.

vi. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

vii. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.

- vii. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.
- c. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:
  - i. Is necessary to facilitate incorporation of an existing structure;
  - ii. Achieve greater consistency with the surrounding street pattern;
  - iii. Buffers impacts to an adjacent residential district; or
  - iv. Is needed to accommodate dealership operations.

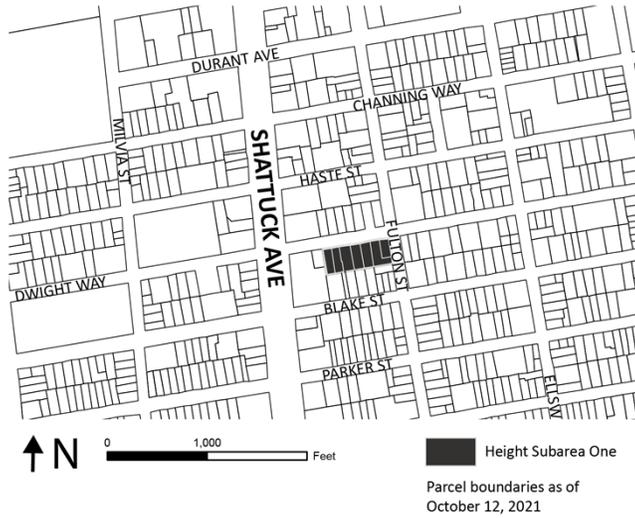
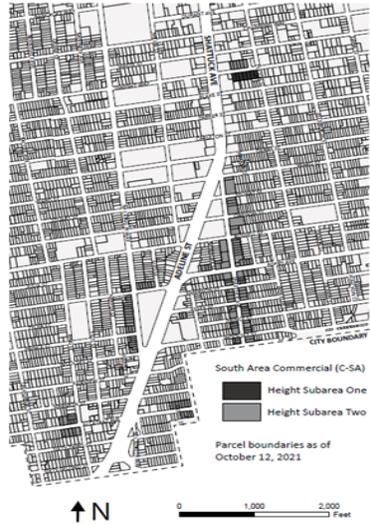
Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

**Commented [HJ10]:** TECHNICAL CHANGE to C-SA: Some C-SA parcels are not included in the C-SA Maximum Building Heights Table

**Table 23.204-28. C-SA Maximum Building Heights**

Building Land Use	Maximum Height	
	Subarea <u>1One</u>	Subarea <u>2All other parcels</u>
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.		

Figure 23.204-3. C-SA Building Height Sub-Areas Area One



Section 8. That Berkeley Municipal Code 23.204.110(B) be amended to read:

**Commented [HJ11]:** 10. Seated Food Service Requirement  
14. Drug Paraphernalia in C-T District

**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

~~2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.~~

~~3. **Drug Paraphrenalia Stores.** Any use involving the sale or distribution of drug paraphrenalia is not permitted in the C-T district.~~

42. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.

53. **Residential Use, Ground Floor.** Residential uses are permitted on the ground floor where located behind a commercial use. The ground floor commercial use must meet the following standards:

- a. Occupy a minimum 30-foot depth of the ground floor, as measured from the ground floor street frontage, and
- b. Occupy the full extent of the building frontage, excluding required utilities, driveways, pedestrian access and residential lobby.

64. **Office Uses.**

- a. Table 23.204-31 shows permits required for office uses in the C-T district.

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:

- i. Include a window display; or

ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**75. Upper Story Uses.**

- a. Floor area above the ground floor may be occupied only by a residential or office uses.
- b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
  - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
  - ii. Does not exceed the ground-floor area of the use.

Section 9. That Berkeley Municipal Code 23.204.120(A)(2)(e) be amended to read:

**Commented [HJ12]:** 5. Hours of Operation

e. Encourage location of ~~late night~~late-night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a ~~11:00 p.m~~12:00 ~~midnight~~ closing time for businesses on Solano Avenue; and

Section 10. That Berkeley Municipal Code 23.204.130(D)(3) be amended to read:

**Commented [HJ13]:** 11. Food Service Establishments  
3,000 sq. ft. or less

**3. Use Limitations; Findings.** ~~Food service establishments and offices~~ Offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that

- a. The project meets the purposes of the Arts Overlay District as set forth above; and
- b. The location, size, type, appearance, and signage of the proposed use will:
  - i. Animate and enhance the pedestrian experience on the street; and
  - ii. Be generally open to the public evenings and on weekends, whenever practicable.

Section 11. That Berkeley Municipal Code 23.204.130(E)(7)(a)(iv) be amended to read:

**Commented [HJ14]:** 1. Group Class Instruction

iv. ~~Gym/Health~~ and Fitness Facility Club

Section 12. That Berkeley Municipal Code 23.204.150(B)(3)(b) be amended to read:

**Commented [HJ15]:** TECHNICAL CHANGE to correct proper use category titles.

**b. Active Commercial Uses Defined.** Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: ~~Retail~~ **Retail Uses Sales**; Personal and Household Services **Uses**; Food and Alcohol Service, Lodging, Entertainment, and Assembly **Uses**; and the following uses: Banks and Financial Services, ~~Retail~~, and Vehicle Parts Stores.

Section 13. That the lines named "~~Family Day Care Home, Large,~~" "~~Family Day Cre Home, Small,~~" "Bar/Cocktail Lounge/Tavern," "Dance/Exercise/Martial Arts/Music Studio," "Food Service Establishment," "Group Class Instruction," "Gym/Health Club," and "Food and Beverage for Immediate Consumption," in Table 23.206-1 Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, are amended, and lines named "Food Service Establishment, Under 5,000 sq. ft." "Food Service Establishment, 5,000 sq. ft. or larger," "Food Service Establishment, Under 20,000 sq. ft." "Food Service Establishment, 20,000 sq. ft. or larger" "Live Entertainment, Unamplified" and "Live Entertainment, Amplified" are added, to read:

**Commented [HJ16]:** 1. Group Class Instruction  
3. Stand-Alone Beer and Wine  
9. Live Entertainment  
13. Incidental Food Service Requirements  
XX. Technical change for Family Day Care Home

**TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS**

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	23.206.040.C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	23.206.040.C
Bar/Cocktail Lounge/Tavern/ <del>Tap Room/Wine Tasting</del>	NP	NP	NP	See 23.306	
Dance/Exercise/Martial Arts/Music Studio	NP	NP	--	UP(PH)	
Food Service Establishment	See 23.302.070.E				
Food Service Establishment, Under 5,000 sq. ft	=	=	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 5,000 sq. ft. larger	=	=	UP(PH)*	UP(PH)*	23.302.070(E)
Group Class Instruction	NPZC	NPZC	--	UP(PH)ZC	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Gym/Health and Fitness Facility Club	NP	NP	--	NP	
<b>Incidental Uses</b>					
Food and Beverage for Immediate Consumption	--	AUP [2]	--	--	
Food Service Establishment	AUP [2]	--	AUP [2]	AUP	
Food Service Establishment, Under 20,000 sq. ft	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 20,000 sq. ft. larger	NP	AUP*	NP	AUP*	23.302.070(E)
Live Entertainment	NP	NP	UP(PH)*	UP(PH)*	23.302.020(D)
Live Entertainment, Unamplified	NP	NP	ZC	ZC	
Live Entertainment, Amplified	NP	NP	AUP	AUP	

**Commented [HJ17]:** Instead of using a table in section 23.302.070, we made two new land uses here, for ease of use. Cutting the reference and the table simplifies the code.

Section 14. That Berkeley Municipal Code 23.302.020(B) be amended to read:

**Commented [HJ18]:** 5. Hours of Operation

**B. Hours of Operation.**

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district, unless otherwise restricted by an existing permit.

2. **Hours of Operation Defined.**

**Commented [HJ19]:** Not new language; existing language that has been relocated

a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.

b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:

i. The delivery, maintenance, security, product preparation and other pre-opening activities, and

ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

a. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

c.

2.3. **Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1. If more restrictive hours of operation than what is permitted in Table 23.302-1 are imposed as a condition of approval on an existing AUP or UP, the hours may be modified within the district's current limits with approval of an AUP regardless of the original review authority.

**Table 23.302-1: Allowed Hours of Operation**

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, C-NS, C-AC, C-W nodes	7:00 a.m. — 12:00 midnight 6:00 a.m. — 2:00 a.m.	AUP
C-N, C-E, C-NS, C-SO, C-SA, C-W outside nodes, MU-R	7:00 a.m. — 11:00 p.m. 6:00 a.m. — 12:00 midnight	UPAUP
C-W nodes	6:00 a.m. — 12:00 midnight with Zoning Certificate	UP
C-SA	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 12:00 Fridays and Saturday	UP
C-AC	7:00 a.m. — 12:00 midnight Sundays through Thursdays 7:00 a.m. — 2:00 a.m. Fridays and Saturday	UP
C-T, C-DMU between Bancroft Way and the north side of Dwight Way	24 hours per day 7 days a week	N/A
C-T between the south side of Dwight Way and Parker Street	7:00 a.m. — 12:00 midnight	AUP
C-DMU	6:00 a.m. and 2:00 a.m.	AUP
MU-R	6:00 a.m. and 10:00 p.m.	AUP

**24. Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business's ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, ~~traffic or parking problems~~ affecting the well-being of the residents of the district.

~~3. C-T District Findings.~~ The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.

**4. Hours of Operation Defined.**

~~a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.~~

~~b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:~~

- ~~— The delivery, maintenance, security, product preparation and other pre-opening activities, and~~
- ~~— Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.~~

~~For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.~~

**Commented [HJ20]:** This definition is moved up to the beginning of the section

**Section 15.** ~~That Berkeley Municipal Code 23.302.020(D) be removed and that Berkeley Municipal Code 23.302.020(E) be amended to read:~~

**Commented [HJ21]:** 9. Live Entertainment.

~~D. Live Entertainment -- Permits Required. Live entertainment incidental to a permitted use is allowed as shown in Table 23.302-2.~~

**Commented [HJ22]:** Permit levels now moved to Commercial and Manufacturing Use Tables (one row for each of amplified and unamplified)

**Table 23.302-2: Permit Requirements for Live Entertainment**

ZONES	PERMIT REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC	AUP	ZC
C-N, C-NS, C-W	UP(PH)	ZC

ZONES	PERMIT-REQUIRED	
	AMPLIFIED	UNAMPLIFIED
C-E	Not Permitted	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

**1. Allowed Activities.**

- a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.
- b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.

**ED. Outdoor Uses.**

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
  - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
  - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.** Table 23.302-2 Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.
3. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)

C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC
20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes:	
[1] Size is measured as the lot area of the outdoor activity or storage	
[2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

- 54. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
- 65. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

Section 16. That Berkeley Municipal Code 23.302.070(E) be amended to read:

**E. Food Service Establishments.**

- 1. ~~Maximum Size in R-SMU.~~ Food service establishments in the R-SMU district may not exceed 1,200 square feet.
- 2. ~~Permits Required in Commercial Districts and in the R-BMU.~~ 6 shows permits required for food service establishments in the commercial districts and in the R-BMU.

**Table 23.302-6: Permit Requirements for Food Service Establishments**

**Commented [HJ23]:** 10. Seated Food Service Requirements  
 11. Food Service Establishments 3,000 sq. ft. or less  
 13. Incidental Food Service Establishments

**Commented [HJ24]:** These requirements amended and moved to Residential and Commercial Allowed Use tables (see Sections 1 and 3, above)

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-W	
Under 1,500 sq. ft	ZC
1,500 sq. ft. or more	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
R-BMU, North Berkeley BART Station	UP(PH)
C-E	AUP [1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP [2]
Notes: [10]— All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food-product store. [11]— See 23.204.130.D.3 for required findings.	

3. **Notification of Decision.** Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

4. **Carry Out Limitations in C-U District.** Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.

5.1. **Outdoor Cafe Seating.**

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
  - i. Zoning Certificate when seating does not abut a residential district.
  - ii. AUP when seating abuts a residential district.

~~b. Outdoor seating is not permitted for food service establishments in the MU-LI District.~~

~~e.b. Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).~~

~~6.2. **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.~~

~~7.3. **C-W District Requirements.**~~

~~a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.~~

~~b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:~~

~~i. The project does not conflict with the goals and policies of the C-W district;~~

~~ii. The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;~~

~~iii. The project supports pedestrian-oriented development;~~

~~iv. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and~~

~~v. For projects which include construction of new buildings, the project design:~~

~~1. Provides intensity of development which does not underutilize the property, especially at or near intersections of major streets;~~

~~2. Provides pedestrian scale and siting; and~~

~~3. Incorporates continuity in street facades.~~

~~8. **Permits Required in Manufacturing Districts.** Table 23.3028 shows permits required for food service establishments in the manufacturing districts.~~

**Commented [HJ25]:** These requirements amended and moved to Manufacturing District Use table (see Section 13, above)

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS**

USE TYPE AND SIZE	DISTRICT			
	M	MM	MU-LI	MU-R
<b>Incidental Use</b>				
Under 20,000 sq. ft.	AUP [1]	AUP [1,2]	AUP [1]	AUP [1]
20,000 sq. ft. or more	-	-	-	AUP
<b>Carry Out Food Service (Primary Use)</b>				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
<b>Quick Service Restaurant (Primary Use)</b>				
Under 5,000 sq. ft.	-	-	AUP	AUP
5,000 sq. ft. or more	-	-	UP	UP
<b>Full-Service Restaurant (Primary Use)</b>				
	-	-	UP	UP
Notes:				
[12]— Outdoor food service is not permitted.				
[13]— Limited to food or beverage for immediate consumption.				

**9.4. MU-LI and MU-R District – Findings.**

- a. To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

Section 17. That Berkeley Municipal Code 23.302.070(G) and (H) be amended to read:

Commented [HJ26]: TECHNICAL EDITS to correct numbering

**G. Parking Lot/Structure.**

**1. Permits Required.**

2-1. **Permits Required.** Table 23.302-9-7 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

**TABLE 23.302-9-7: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

DISTRICT	PERMIT REQUIRED
<b>Residential Districts</b>	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
<b>Commercial Districts</b>	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
<b>Manufacturing Districts</b>	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.

Notes:

[14][1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area

**3-2 Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

**H. Residential Use, Ground-Floor Units.**

1. Southside Plan Area. In the R-3, R-S, R-SMU, and C-T districts within the Southside Plan boundaries, individual unit entries located within six feet of the front property line shall be at least 18 inches above the finished grade of the adjacent public frontage.

I. **Senior Congregate Housing.** Table 23.302-40-8 shows permits required for senior congregate housing.

**TABLE 23.302-408: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING**

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

Section 18. That Berkeley Municipal Code 23.310.020 be amended to read:

Commented [HJ27]: 4. Alcoholic Beverage Sales Standards

**A. Applicability.**

1. This section applies to any application to begin ~~or increase~~ alcoholic beverage sales or service, excluding ~~beer and wine~~ alcoholic beverage service incidental to a food service establishment ~~in a Commercial District~~ (see 23.310.030 (Alcoholic Beverage Service When Incidental to a Food Service)).

~~2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:~~

~~a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;~~

~~b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and~~

~~c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.~~

~~3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.~~

~~B. Permit Required. A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.~~

~~1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).~~

~~4-2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority.~~

~~C. Application – List of Nearby Establishments. As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.~~

~~DC. Findings of Public Convenience or Necessity. To approve a permit for alcoholic beverage sales or service, the decision-making body must make the following findings: If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application~~

~~1. The number of alcoholic beverage sales licensees in the census tract does not exceed the limit set by the Department of Alcoholic Beverage Control, as defined in California Business and Professions Code Section 23958.4, excluding Food Service Establishments with incidental alcohol service; and~~

~~4-2. At least one of the following; only if it makes all of the following findings:~~

~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.~~

~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~

~~b.-c. The applicant has operated a licensed establishment that has not been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley, as verified by the Police Department, such violations do not indicate a high likelihood of~~

~~further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB decision-making body may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.~~

- ~~4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.~~
- ~~3. If the number of alcoholic beverage sales licenses in the census tract exceeds the limit set by the Department of Alcoholic Beverage Control; the decision-making body must find that the public convenience or necessity would be served by approving alcohol sales at the proposed location for any two or more of the following reasons:
 
  - ~~a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the purposes of the district.~~
  - ~~b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.~~
  - ~~c. The sale of alcoholic beverages will enhance recreational or entertainment opportunities in the area.~~
  - ~~d. The sale of alcoholic beverages complements the sale of other goods and merchandise at the location.~~
  - ~~e. The issuance of a license at the proposed location will improve the convenience of area residents and visitors who purchase alcoholic beverages.~~~~
- ~~4. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.~~

Section 19. That Berkeley Municipal Code 23.310.030 be amended to read:

- A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment. If more restrictive requirements than what is permitted in Table 23.310-1 are imposed as a condition of approval on an existing AUP or UP, the use may be modified with an AUP regardless of the original review authority.

**Table 23.310-1: Permits Required for Alcoholic Beverage Service**

**Commented [HJ28]:** 2. Incidental Distilled Spirits  
4. Alcoholic Beverage Sales Standards  
10. Seated Food Service Requirement  
15. Third Party Rental

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)
<u>R-BMU</u>	<u>ZC</u>	<u>UP (PH)</u>
All Commercial Districts, <del>except C-AC and the R-BMU District</del>	ZC	<u>UP(PH) AUP</u>
<del>C-AC</del>	<del>ZC</del>	<del>AUP</del>
MU-LI, MU-R	<u>UP(PH) AUP</u>	<u>UP(PH) AUP</u>

**B. Use Limitations.**

- ~~1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.~~
- ~~2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.~~
- ~~3. **C-NS and R-BMU Districts.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.~~
- ~~4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.~~
- ~~5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.~~

**CB. Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment ~~in a Commercial District.~~

1. **Licensing.**
  - a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
  - b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations

regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.

**2. Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcoholic Beverage Control.
- c. The sale of beer and wine for off-site consumption is not permitted.
- ~~d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.~~
- ~~e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.~~
- ~~f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.~~
- ~~g-d. Hours of operation are subject to review and amendment by the review authority, Zoning Officer or the ZAB as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.~~

**3. Operation.**

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During ~~operating the food service establishment's~~ hours of operation, ~~400 percent of the service~~ all public areas shall be ~~designed and used~~ available for meal service and ~~the food service establishment~~ must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- ~~d. At no time shall the operator rent the restaurant space to a third party.~~
- ~~e-d. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:~~

i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and

ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.

~~f.e.~~ The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

~~g.f.~~ The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

#### 4. Advertising.

~~a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement. Establishments shall comply with Municipal Code Chapter 20.67 (Alcohol Product Advertising)~~

~~b. Alcohol-dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.~~

#### 5. Training.

a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.

b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

Section 20. That Berkeley Municipal Code 23.324.040(B)(2)(b) be amended to read:

b. **Uses with Major Investments.** Lawful nonconforming ~~full or quick service restaurants~~ food services establishments with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major

**Commented [HJ29]:** TECHNICAL EDIT: "full or quick service restaurants" no longer exist as a use type (see Section 25 below)

investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

- i. Such fixed structures, equipment, or facilities are removed; or
- ii. Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.

Section 21. That Berkeley Municipal Code 23.502.020(B)(4) be amended to read:

Commented [HJ30]: 3. Stand-Alone Beer and Wine

- 4. **Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is ~~only~~ incidental to the consumption of such beverages.

Section 22. That Berkeley Municipal Code 23.502.020(D) be amended to read:

Commented [HJ31]: 1. Group Class Instruction

D. "D" Terms.

- ~~1. **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.~~
- ~~2-1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.~~
- ~~3-2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.~~
- ~~4-3. **Density.** See 23.106.100 – Residential Density~~
- ~~5-4. **Density Bonus.** See 23.332.020 (Definitions).~~
- ~~6-5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.~~

- ~~7-6.~~ **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
- ~~8-7.~~ **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
- ~~9-8.~~ **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
- ~~10-9.~~ **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
- ~~11-10.~~ **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
- ~~12-11.~~ **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
- ~~13-12.~~ **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
- ~~14-13.~~ **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
- ~~15-14.~~ **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
- ~~16-15.~~ **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

Section 23. ~~That~~ Berkeley Municipal Code 23.502.020(F) (11) be amended to read:

**Commented [HJ32]:** TECHNICAL EDIT: There are no longer any regulations pertaining to Carry Out Food Store, Quick Service Restaurant, or Full Service Restaurant; so, deleting definitions.

11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

~~a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on-premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.~~

~~b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on-premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.~~

~~c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is stored, cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining, and may provide with table service (waiters).~~

Section 24. That Berkeley Municipal Code 23.502.020(G)(6) be amended to read:

Commented [HJ33]: 1. Group Class Instruction

6. **Group Class Instruction.** An establishment that offers specialized programs in personal growth, and development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.

Section 25. That Berkeley Municipal Code 23.502.020(G)(9) be removed:

Commented [HJ34]: 1. Group Class Instruction

9. ~~**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.~~

Section 26. That Berkeley Municipal Code 23.502.020(H)(2) – (11) be amended to read:

**Commented [HJ35]:** 1. Group Class Instruction

2. **Health and Fitness Facility.** A facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to person health and fitness are available to customers or members. Excludes park/playground.

**Commented [HJ36]:** New definition to replace Gym/Health Club/Fitness Studio

23. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.
34. **Height of Building, Average.** See 23.106.090.A (Average Building Height).
45. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).
56. **Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

- (1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
- (2) Class II Home Occupation--Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
- (3) Class III Home Occupation--Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

67. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
78. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
89. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
910. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
4011. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
4412. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
- (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
  - (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
  - (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

Section 27. ~~That~~ Berkeley Municipal Code 23.502.020(S)(31) be amended to read:

Commented [HJ37]: 1. Group Class Instruction

31. **Studio.** See Art/Craft Studio ~~and Dance, Exercise, Martial Arts or Music Studio.~~

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT



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-

accessible service and information to the community,”<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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

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

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

<sup>3</sup> 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](https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx)

<sup>4</sup> 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](https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/2019-01-22_Item_01_Ordinance_7635.aspx)

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

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

Jordan Klein, Economic Development Manager, (510) 981-7534

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

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
ZONING ORDINANCE AMENDMENTS TO SUPPORT BERKELEY  
BUSINESS**

**The public may participate in this hearing by remote video or in-person.**

The Department of Planning and Development is proposing amendments to the City's Zoning Ordinance (Title 23) to establish a streamlined, cost-effective, and expedited review and approval process tailored to smaller businesses, while preserving the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.150 R-BMU Residential BART Mixed Use District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use-Specific Permit Requirements and Regulations
- 23.204.080 C-E Elmwood Commercial District
- 23.204.100 C-SA South Area Commercial District
- 23.204.110 C-T Telegraph Avenue Commercial District
- 23.204.120 C-SO Solano Avenue Commercial District
- 23.204.130 C-DMU Downtown Mixed-Use District
- 23.204.150 C-AC Adeline Corridor Commercial District
- 23.206.020 Allowed Land Uses (Manufacturing Districts)
- 23.302.020 Supplemental Use Regulations (Hours of Operation)
- 23.302.070 Supplemental Use Regulations (Use-Specific Regulations)
- 23.310.020 Alcoholic Beverage Sales and Service (General Alcohol Service Requirements)
- 23.310.030 Alcoholic Beverage Sales and Service (Incidental Alcohol Service Requirements)
- 23.324.040 Nonconforming Uses
- 23.502.020 Glossary

The hearing will be held on, February 27, 2024 at 6:00 pm in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of February 15, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Justin Horner, Associate Planner, at 510-981-7476.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov) for further information.

**Published:** February 16, 2024 – The Berkeley Voice

**Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.**

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 15, 2024.

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Mark Numainville, City Clerk



citypossible™  
Pioneered by Mastercard

# 24-Hour Cities Network governance workshop

INSIGHT REPORT

MAY 2022



# Contents

|           |                                                         |
|-----------|---------------------------------------------------------|
| <b>4</b>  | Governance at night                                     |
| <b>7</b>  | Night-time governance case examples                     |
|           | New York                                                |
|           | Collaborative governments for creative solutions        |
|           | Melbourne                                               |
|           | Activating advisors and building knowledge partnerships |
|           | Montreal                                                |
|           | Citizen organizations and civic engagement              |
| <b>14</b> | Discussion                                              |
| <b>18</b> | Workshop participants                                   |
| <b>22</b> | Helpful links                                           |

# Introduction

This report is the synthesis of insights drawn from the Governance Workshop of the 24-Hour Cities Network on April 28th, 2022. The 2-hour workshop covered a wide variety of topics and included presentations and discussions on how to build effective city governance at night-time. This report is divided into three main sections: framing of governance at night for the discussion, insights from the main case studies presented, and insights from the group discussion that followed.





# Governance at night

*Presentation by Andreina Seijas, Resident Expert*

Urban governance is the process through which different actors in the public and private sectors collaborate to manage cities. When brought into the context of running cities at night, this urban governance principle remains the same.

There is an increasingly large number of actors, organizations, and institutions in the space of all types, with many groups jostling to have their voices heard on how cities are planned and operated at night. Given the proliferation of actors, there is widespread confusion on who can and should do what, which can create resistance to addressing the topic in some cities. However, much of this can be dispelled by addressing three primary myths of night-time governance:

## MYTH #1

### Shorter nights = better nights

The first myth about governance at night-time is that efficient night-time management requires reducing the hours and restricting the locations of night-time activity. This includes actions like imposing curfews and lockdowns and restricting business operation hours. One way to counteract this myth is to highlight examples of cities that have expanded nightlife activity in a strategic way, such as the cities experimenting with the use of time-based licenses. Amsterdam, for example, uses 24-hour licenses that allow venues and establishments to open 24 hours. The city focused on distributing these licenses to neighborhoods outside its crowded city center to redistribute nightlife outside of its busy core. This spreads the benefits of night-time economic activity more widely while also limiting the negative impacts of such dense concentration.





## MYTH #2

## More police means more safety

The second myth is that night-time governance means greater policing and surveillance. There are an ever-increasing number of institutions, mediators, volunteers, and neighborhood groups involved in managing the city at night. However, many cities still try to solve night-time safety issues by deploying more police and surveillance.

This need not be the case. Cities around the world have pioneering examples of non-police public safety organizations, such as Les Pierrots de La Nuit in Paris, the Soho Angels in London, and the Rembrandtplein Square Hosts in Amsterdam. These programs focus on shifting away from strict policing by decentralizing authority and creating different ways to engage with people at night to de-escalate violence.



## MYTH #3

## Night-time is party time

To many, the night is for leisure- lively concerts, fun restaurants, pulsing nightclubs, and rowdy bars. However, this is a very restrictive view of life at night- and requires us to look beyond leisure and entertainment and think of night-time as a time to work, connect with friends and family, and live every aspect of life. In 2016, Colombian think tank Corpovisarios conducted a study in Cali, Colombia asking people what activity they do outside their homes after 8pm. Contrary to the conventional wisdom that this would be cultural or leisure activities like dancing or drinking, the number one activity cited as exercise- running, biking, and going to the gym. Thinking of the night-time solely in terms of partying takes away from the night's vibrancy- and keeps decision-makers from formulating the best night-time governance strategies.



## Moving forward

Part of how we bust these myths and move toward more effective night-time governance is to treat cities at night as just as deserving of effective planning and management as cities during the day. In recent years as more and more cities have taken the topic more seriously, offices of official night mayors, unofficial night mayors, associations, commissions, and councils have proliferated around the world. As a result, a growing cast of actors is involved, and priorities shift based on location and the ecosystem involved. Unfortunately, there are limited resources to address these issues, which is why providing opportunities to collaborate between the public and private sectors, as well as academia and civil society, is becoming increasingly important.

As night-time governance continues to develop, it is crucial to test the feasibility or the applicability of new solutions and find avenues for them to become a reality. Additionally, other considerations should undergird all night-time governance solutions. Sustainability, for example, continues to be a vital point of discussion. Decision-makers must focus on how we can make night-time ecosystem environments safer, more inclusive, more economically sustainable, and prosperous, with an eye toward adhering to the Sustainable Development Goals. It is important to acknowledge that there are regional differences and that they matter. We also need to ensure that night-time governance isn't just a fleeting topic- but that it becomes a permanent fixture of how we govern cities.



## NEW YORK

## Collaborative governments for creative solutions

*Presentation by Ariel Palitz, Executive Director,  
New York City Office of Nightlife*

New York City's Office of Nightlife is a non-enforcement liaison between the city and the nightlife industry created in 2017 through legislation introduced by Councilmember Rafael Espinal and signed by Mayor Bill de Blasio. The genesis was to provide a safe, trusted space for the industry to interact with the city rather than through law and regulation enforcement channels. The idea behind the founding of the office was to see nightlife as an asset rather than a liability and build a more holistic and respectful relationship between the city and the industry.

One of the first actions the office undertook after it was created was a five-borough listening tour to get broad feedback from across the nightlife industry. This included business owners, workers, performers, patrons, and residents. In addition to the Office of Nightlife, the New York State liquor authority and city police, fire, and health departments were invited to the tour to listen to residents as well. The office also held focus groups to do deep dives into key issues and then conducted a comprehensive economic impact study. They found that the industry had over 25,000 liquor-licensed establishments that accounted for \$35.1 billion in economic activity and supported nearly 300,000 jobs in New York City. The combination of listening to real concerns, grievances and ideas coupled with a comprehensive economic impact study helped to provide the feedback that shaped the office's agenda.

"...How does the city create a framework to manage these issues? This led to the formation of a four-pillared agenda to set priorities for the office. These pillars were 1) Supporting business development and recovery, 2) Improving and addressing quality of life issues between venues and residents, 3) Promoting safety, equity, and harm reduction, and 4) Elevating and preserving nightlife culture."

This effort brought into focus the vastness of the industry and raised the question- How does the city create a framework to manage these issues? This led to the formation of a four-pillared agenda to set priorities for the office. These pillars were 1) Supporting business development and recovery, 2) Improving and addressing quality of life issues between venues and residents, 3) Promoting safety, equity, and harm reduction, and 4) Elevating and preserving nightlife culture.

From this, the office moved into action meant to address the holistic issues that were present pre-pandemic but have only grown in urgency since the worst of the pandemic has subsided. This began by developing MASH (multi-agency support for hospitality)- a dedicated multi-agency nightlife working group that meets every six weeks to discuss how agencies work with each other and with industry to improve self-correction, avoid redundancies, and identify systemic solutions while addressing individual issues. This group also provides a central point of contact with each agency to provide one-on-one case management for individual venues when they experience issues with key city and state agencies. Additionally, in response to accountability and transparency concerns of activists and venue operators, it also provides transparency reporting on M.A.R.C.H (multi-agency response to community hotspots) operations- a police department-led law enforcement program.

The office also created MEND (mediating establishment and neighborhood disputes) to improve the complaint-driven process of night-time quality-of-life law enforcement. With the current system, complaints calls are logged, and the police are dispatched in the early hours of the morning, leading to a situation where few of the underlying issues are resolved. MEND introduces a mediation process that can work with venues and residents to directly communicate and compromise. MEND is run in partnership with the Center of Creative Conflict Resolution in the Office of Arbitration Trials and Hearings, which took the city judges in their mediation division and gave them a more public-facing role, allowing city residents to resolve quality of life issues without involving law enforcement.

The office has also focused on a harm reduction strategy for illicit drugs in partnership with the city Department of Health by providing free Narcan and naloxone kits and test strip training and access. The Narcan Behind Every Bar Campaign trains workers on how to use Narcan brings awareness to the issues involved, and dispels stigma. By bringing together the key groups involved, including the police, all stakeholders can work to address concerns and ensure that a life-saving harm reduction approach is being taken.

"If cities can govern nightlife as the essential part of the fabric of a city that it is, rather than a luxury, we can continue to build healthy, well-governed 24-hour cities."

In addition to these large initiatives, there are plenty of solutions that may seem small but have the potential to hugely improve the governance of cities at night. This includes providing permits for temporary cultural events or repealing outdated laws that prohibit dancing at particular venues in certain parts of the city. Another small but mighty improvement is the standardization of the business application process for Community Boards. Community Boards are neighborhood-based advisory bodies in New York City that consult elected officials and government agencies on issues in a particular district and have a say in approving new liquor licenses. The Office of Nightlife is now working with the city's elected officials to create a standard, business-friendly process to replace the different processes each of the 59 boards currently utilize.

As cities emerge from the pandemic, it is important for city governments to acknowledge how much the nightlife industry has been through in the last few years and how much collaboration and support is needed for this vital sector of the urban economy. If cities can govern nightlife as the essential part of the fabric of a city that it is, rather than a luxury, we can continue to build healthy, well-governed 24-hour cities. Government agencies that are ready and willing to collaborate within, outside of, and between governments to develop and implement creative, innovative solutions will allow their cities to reap the benefits of a robust night-time economy.



## MELBOURNE

# Activating advisors and building knowledge partnerships

*Presentation by Michele Acuto, Director,  
Melbourne Centre for Cities, University of Melbourne*

Melbourne topped indices of the world's most livable city for years, and its nightlife was a key component of these accolades. The shutdown of nightlife during the COVID-19 pandemic hugely affected the city and its identity. Much of the recovery has been supported by the efforts of the Melbourne Night-time Economy Advisory Committee, an advisory council that sits outside of the official city government that advises the city on night-time issues. The committee represents and guides the city, particularly on major investments the city is making. Given that Melbourne does not have a designated "Night Mayor" or nightlife office, the committee chairman, committee and its various partners serve that function for the city. The committee has focused its efforts on reviving the heart of the city and designing programs that match the night-time economy goals with the larger aspirations for Melbourne as a city while supporting its unique character.

One of these programs, Flash Forward, used art installations by local artists to draw people to Melbourne's lesser know laneways- unique pedestrian streets throughout the city that are replete with shops, cafes, bars, and restaurants and that suffered greatly during COVID-related lockdowns that closed 20% of the city's businesses. Planning controls were suspended to encourage the opening of shops. The program is an example of the importance of not simply spending money to solve a problem but of building creative partnerships between stakeholders.

"As we shift the frame of thinking about night-time economies from how to deal with nightlife to how to manage a holistic 24-hour city, knowledge partnerships are an important mechanism for producing innovative ideas."

Another important aspect of Melbourne's approach to governing the night-time economy is its physical and philosophical proximity to major academic institutions. For instance, the University of Melbourne's School of Design studio produced the report that became the primary terms of reference for the Night-time Economy Advisory Committee. The university is also very involved in a program called Project Night Justice, which focuses on improving the safety and well-being of women, trans women, and other members of the LGBTIQ+ community, similar to other programs like London's Good Night Out Campaign. The university is also using federal funding to explore ways to design better environments for night shift workers.

Knowledge partnerships between government entities and universities allow for greater experimentation, research and solution building without being heavily constrained by policymaking and politics. As we shift the frame of thinking about night-time economies from how to deal with nightlife to how to manage a holistic 24-hour city, knowledge partnerships are an important mechanism for producing innovative ideas. Melbourne's effective combination of an advisory group that sits outside of government and knowledge partnerships with a local university is a good example of building night-time governance without an official city agency.



## MONTREAL

## Citizen organizations and civic engagement

*Mathieu Grondin, General Director, Montreal 24/24*

Active civic groups also have a major role in ensuring a successfully managed night-time economy. In Montreal, a group of friends created a non-profit citizen organization called Montreal 24/24 to support the nightlife industry community and develop the night-time economy. The group now has a partnership with Montreal's economic development agency and funding from the city to help Montreal develop a nightlife policy. Montreal 24/24 commissions research studies, runs a night council, provides workshops, plans summits, and undertakes pilot projects.

One of the most important aspects of Montreal 24/24's work is the citizen participatory process, which is primarily work done through the Night Council. Unlike similar councils in other cities, the Night Council does not represent industry but is composed of 12 citizens with a variety of experience in nightlife, from artists to venue owners, public health experts, and academia. The Council was formed during the pandemic and is divided into four committees 1) Permanent spaces (venues, bars, and clubs) 2) Temporary initiatives, festivals, and events 3) Health, safety inclusion, and diversity and 4) Living at night. The original Council members were selected, but going forward, they will be elected with the first election planned for autumn 2022.

“Even citizen-developed and led groups have the power to help shape night-time governance policy, and when they can find governments that want to work collaboratively with them, their power only grows.”

Their mandate is to listen to opinions and provide recommendations on different topics related to nightlife. One of the primary ways the night council interfaces with the community is to hold a yearly event called the Open Mic. All of the citizens of Montreal are invited to take the mic and share their experiences of nightlife, positive or negative, and their vision for the future.

The Council also organizes Montreal Au Sommet De La Nuit, an event that gathers leaders from around the world to talk about night-time governance and to learn about different practices around the globe. At this year's event, Montreal 24/24 will also be using this venue to pilot Montreal's first 24-hour license by throwing a 24-hour party that will feature more than 30 local artists. The idea behind the 24-hour license is not just to extend the fun for patrons but help foster emerging talents and provide more opportunities for those that work at night-time. Instead of limiting the window for night-time cultural flourishing to a few hours a couple of nights a week, a 24-hour license provides the opportunity for more broad-based participation in the night-time economy. The event will also serve as an opportunity to gather data and insights about the effects of a 24-hour license on business revenues, public safety, and effective mobility.

In the future, the ambition is to set zones in the city to have 24-hour sectors. This is an important step in protecting small independent venues and ensuring they're not at risk of being closed by noise complaints. The hope is that this pilot project will be the first step to extending this scheme more permanently and, in the next year or a year and a half, to have a permanent nightlife policy.

Even citizen-developed and led groups have the power to help shape night-time governance policy, and when they can find governments that want to work collaboratively with them, their power only grows. Montreal 24/24 is a great example of how citizen action on night-time governance can lead to long-lasting government-backed results in the absence of a permanent government apparatus.



## Discussion

### Finding funding

Funding is also a major issue in supporting the night-time economy, and in some cases, there is tension between public and private sources. Many cities are happy to leverage public funds to make improvements that directly support private businesses. In Sydney, Australia, for example, the city had "Night-time diversification" and "Live music and performance" grants to support small entertainment businesses with upgrades meant to improve their spaces and pilot new types of entertainment. This support can include upgrading event spaces, support for event production, acoustic improvements, and health and safety projects. This policy incentivizes extra measures that improve the business while also adding benefits that the city would otherwise want, like safety improvements and noise reduction. There is even power in cities working together to lobby higher levels of government for support- Groningen, the Netherlands, has also found success in partnering with other dutch cities to lobby for funds and support from the national government on supporting night-time economies.

However, in some cities, getting the government to invest funds in private businesses is more difficult. It often takes creative action from civil society to show cities the value of such programs. In Vilnius, Lithuania, the city government is readily willing to invest funds in public art and culture, but the city has traditionally been very hesitant to use government money in support of private business. Given that funding from the government can often incentivize establishments to implement things they cannot be otherwise compelled to do, outside groups looked for ways to prove the efficacy of these types of governance tactics.

“Resistance often stems from misunderstandings of the function of night-time businesses and a feeling of disconnection between night-time businesses and their surrounding communities. Solving this requires working with and in communities to help them understand, demystify the night, and help communities realize the benefits of the night economy.”

The Vilnius Night Alliance worked with the city to develop the municipally-led “More than a Bar” program to give bars a door sticker for providing extra staff training that is not required by law, for example, sexual harassment prevention. The sticker will provide the bars with a special status and includes a code that can be scanned to understand how the bar is putting in extra effort. This provides the dual benefit of educating patrons and helping the city government quantify the additional positive actions businesses are willing to take when incentivized, making the argument for city financial support easier.

## Demystifying the night

One of the biggest barriers to implementing proposals that further support the night-time economy is resistance from residents. This resistance often stems from misunderstandings of the function of night-time businesses and a feeling of disconnection between night-time businesses and their surrounding communities. Solving this requires working with and in communities to help them understand, demystify the night, and help communities realize the benefits of the night economy.

In Groningen, proponents of night-time businesses have focused on building a broad spectrum of political support. The city has found success by emphasizing the business and safety benefits with right-leaning groups and the cultural aspects with those on the left. This has been crucial to the successful implementation of 24-hour licenses that have been in place since 1983. The scheme has brought the city a variety of benefits that please all sides. Right-leaning groups can appreciate the increased economic growth that comes from a longer period of daily economic activity, as well as the benefits to safety as the increased amount of people on the streets at all hours disincentivized crime. The flourishing culture pleases those on the left as more artists, and cultural sector workers have flowed into the city to take advantage of the increased opportunity. Emphasizing the many benefits in a way different groups can understand is important for creating broad-based buy-in for implementing beneficial night-time governance policies.

While working with the most active and vocal sectors of a city’s citizenry is important, it is also useful to educate surrounding communities on what goes on in businesses at night. This makes it easier for them to relate to the benefits and helps them understand what supporting the night-time economy means for them. In Zurich, night-time businesses participate in Open Club Day. Bars and venues open one day per year in the afternoon and invite the neighbors to come and see what happens behind the scenes. It often includes children’s discos where families can take their children to play in the club and give them a glimpse of what it is like to produce music and entertainment. Strategies like these help neighbors and politicians understand why night-time businesses can be a positive for them and their families.

## Lessons from COVID

As for nearly all sectors of the economy, the COVID-19 pandemic had a huge effect on the night-time economy, with many businesses that operated primarily at night brushing closer than most to existential crisis. While many of the dire predictions made about the demise of nightlife at the height of the pandemic did not come to pass, night-time business still used the time as a moment of reflection, and many have come back with a different approach than before the pandemic. Discussions around topics like diversity, inclusion, and social justice in nightlife have led to new commitments for how business is conducted. The right to be safe at work or at play during the night and the right to move freely are just a few of the issues that are top of mind for all involved in night-time cities.

COVID-19 also accelerated the development and implementation of a variety of innovative ideas that will remain an integral part of night-time city life around the world. Through Bogota 24h (the city's night-time office) Bogotá, Colombia, undertook 13 pilot projects to help spur the economic recovery of the city, with nightlife at the forefront, but also introduced a "Night at the Museum" concept during the pandemic that will also become a recurring feature of Bogotá nightlife.

Bogotá A Cielo Abierto was another project the city undertook in 50 areas of the city to support restaurants and bars as they recovered from the pandemic that will provide valuable insights into policies that can help the city's economy long-term. The initiative focused on ways to support businesses using open-air city spaces for patrons that will outlast the pandemic and include a new legislatively-approved licensing process.

## Making change permanent

One of the most significant issues facing effective night-time governance is ensuring the staying power of 24-hour policies, strategies, and implementors. In many cities, night mayors and offices of nightlife are not written in legislation and can often be shut down between city administrations. It is important that the work that these offices do is sustainable while they exist so that it can survive from administration to administration. For those whose offices are not guaranteed, it is important to demonstrate the value of the office to the wider government. One approach is emphasizing the value of coordinating inside, outside, and in between the government and the private sector. The ability to bring together businesses, community groups, police, the health department etc. is rare and should be highlighted. As is the role such offices can play as a conduit between industry and government. It is also worth stressing the support these offices give in encouraging industry to take more of a leadership role in policymaking and solutions.

Additionally, the way in which night-time offices are created needs to be reoriented. Too often, they are reactive in nature- a city sees its problems at night and creates an office to help solve them. As the field of research and understanding around night-time economies continues to develop, cities must move from simply addressing night-time problems to actually building proactive, affirmative programs and policies to support and foster robust night-time activity with a particular focus on how to turn short-term pandemic interventions into long-term more permanent change.

Part of this involves providing decision-makers with data and evidence in formats they can understand. The ideas from the community of night-time activists, thinkers, and professionals need to be translated into facts and figures for policymakers to ensure a cohesive conversation. In Philadelphia, a partnership between the Philadelphia Department of Planning and Development and the University of Pennsylvania has enabled research across a variety of topics from mobility and zoning. This partnership enables experts to be able to walk into politicians' offices to give data-backed presentations about how to take advantage of the various opportunities presented by a 24-hour city in their area of responsibility- as well as the losses incurred by not taking a proactive stance toward night-time economic development. These types of partnerships can be an important initial step in setting up night-time governance bodies. In the case of Philadelphia, the findings of this research partnership became the founding set of principles that established the city's night-time economy office.

However, it is also important to recognize the role that organizations outside of government can play in the continuity of night-time governance. These organizations often precede and catalyze the creation of official night-time governance apparatuses. Their role remains important while official agencies operate, particularly if they are eliminated or downsized. Their proactive work can be a source of innovation and accountability for government counterparts, no matter the direction of city government.

## Conclusion

City life doesn't stop when the sun goes down- in fact, it only gets richer. From the \$35.1 billion in economic activity generated in New York City to the laugh shared with a long-lost friend at a restaurant table in a public plaza in Bogota- supporting cities at night has benefits for the city-wide economy and our relationship with our family, friends, and neighbors. Effective governance is key to reaping these benefits. Building effective strategies to develop governance will be crucial for any city looking to be a true 24-Hour city. Whether this be building out government night-time offices, creating government-sponsored outside advisory groups, or leveraging citizen-led initiatives that push the city to act, it's up to the whole community to develop quality night-time cities. Particularly in the wake of the COVID-19, 24-hour economic development is crucial for a global urban economy still scarred by lockdowns, population shifts, and business closures. Creating the right frameworks, policies, and initiatives to support 24-hour cities will ensure they thrive for all residents- day and night.



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## About the 24-Hour Cities Network

The 24-Hour Cities Network is a multistakeholder group of urban leaders who, supported by City Possible, gather to share best practices and co-create new solutions to address the challenges cities face at night. Through workshops and thought leadership production, the Network will help cities understand how to create strategies and set policies that ensure their cities are as safe, prosperous, inclusive, and enjoyable at night as they are during the day.

## About City Possible

City Possible™, pioneered by Mastercard, is a new model for urban innovation in which a global network of cities, businesses, academics, and communities work together to make the world's cities more inclusive and sustainable. Find out more at [www.citypossible.com](http://www.citypossible.com).

## Helpful links

[The Urban Night Events and Publications](#)

[Nights Conference 2022](#)

[New York City Office of Nightlife Report 2018-2021](#)

[Montreal 24/24](#)

[The University of Melbourne Centre for Cities](#)

[Melbourne Night-time Economy Advisory Committee](#)

[Project Night Justice](#)

[Philadelphia Nightlife Data Dashboard](#)

[Open Club Day](#)

[Measuring and Analysing the Nighttime City](#)

[New York City's Nightlife Economy Impact, Assets, and Opportunities](#)

[New South Wales 24-Hour Economy Commissioner Year in Review](#)

[Managing Cities at Night  
A Practitioner Guide to the Urban Governance of the  
Night-Time Economy](#)



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