



Office of the City Manager

PUBLIC HEARING
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Referral Response: Amendments to the Home Occupations Ordinance;
Amending BMC Sub-Titles 23C, 23D, 23E, and 23F

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.

SUMMARY

Home Occupations (HOs) are small-scale businesses conducted on residential property as an incidental or secondary land use. They are regulated by BMC Chapter 23C.16 [Home Occupations], which accommodates persons wishing to conduct small, neighborhood compatible businesses from home. Planning Commission's recommended amendments focus on meeting the needs of HOs, while ensuring neighborhood compatibility. Zoning Ordinance amendments presented in this report reclassify HO to reflect levels of activity in relations to customer visits, and set clear guidance on allowance of non-resident employees, hours of operation, advertising signs, and handling of goods. Amendments also restructure and organize the ordinance, as well as update the HO definition for consistency with the BMC, expand flexibility on where HOs can locate within a residence, and allow HO wherever residential uses are permitted. City Council is asked to consider these amendments for adoption.

FISCAL IMPACTS OF RECOMMENDATION

Recommended Zoning Ordinance amendments will have minimal financial impacts on the City. Permit fees compensate the City for review expenses. In addition, zoning

changes are expected to reduce barriers and costs to those interested in operating Home Occupations, which could have an economic benefit to the City.

CURRENT SITUATION AND ITS EFFECTS

Current regulations place the following minimum standards on all HOs:

1. HOs must be conducted entirely within a Dwelling Unit or Group Living Accommodation room.
2. HOs must occupy less than 20% or 400 square feet of the unit, whichever is less.
3. HOs must not generate offensive noise, odors or other nuisances.
4. HOs must not handle or generate hazardous materials.
5. HOs must not have employees from outside of the household.

HOs are classified into three categories, requiring different permits, based on the number of customer visits received, as presented in Table 1.

Table 1: Summary of Existing Home Occupation Categories

HO Category	Customer Visits	Permit¹
Low-Impact	Not Allowed	ZC
Teaching-Related	Four or fewer students allowed at a time	AUP
Moderate-Impact	Allowed	UP(PH)

On December 6, 2011 the City Council adopted a referral to the City Manager, sponsored by then-Councilmember Maio, to align permit requirements for Moderate-Impact HOs and Teaching-Related HOs and to streamline the permitting process for all HOs (see Attachment 2). The Zoning Ordinance amendments recommended in this report also address administrative issues, such as consistency in language and improvements to ordinance organization and structure.

Planning Commission Recommendations

On September 16, 2020 the Planning Commission held a public hearing and unanimously recommended a set of Zoning Ordinance amendments. See Attachment 3 for meeting minutes and Links 1 and 2 (at the end of this report) for Planning Commission staff reports and attachments.

Since the City Council referral was made, a surge in Accessory Dwelling Units and a shift to home businesses have warranted additional considerations. The Planning Commission met four times to discuss options that would meet the operational needs of Berkeley's small home businesses. Its recommendation reflects a simple permitting scheme that is protective of neighborhoods yet accessible to business owners.

¹ ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

A summary of Planning Commission's recommendations are provided in **Table 2 and Table 3** and described below.

Table 2: Summary of Recommended HO Categories

HO Category	Permit	Customer ² Visits	Non-resident Employee	Shipping from the Subject Residence
Class I	ZC	Up to five visits per day, with no more than one customer at a time	Not Allowed	Not Allowed
Class II	AUP	Up to ten visits per day, with no more than four customers at a time	One Allowed	Not Allowed
Class III	UP(PH)	More than 10 visits per day, with no more than four customers at a time	One Allowed	Allowed

Table 3: Summary of Recommended General Requirements

Regulation	Current	Proposed
Storage, services and repair of goods	Not Allowed	Allowed Indoors
Operation of a HO in an Accessory Building or Accessory Dwelling Unit	Not Allowed	Allowed
Advertising Signs	Not Allowed	Not Allowed
Visiting Hours		
ZC	Not Allowed	
AUP	Allowed (10:00 am – 10:00pm)	Allowed for all (10:00 am – 8:00 pm)
UP(PH)	Allowed	
Findings – HO customer visits and shipping must not cause a significant impact to:		
Parking availability	Addressed	Addressed
Pedestrian and bicyclist safety	Not Addressed	Addressed

1. Customer Visits

- Reclassify Low and Moderate-Impact HOs to Class I and Class II HOs.

² A "customer" includes, for example, a parent and child attending a lesson, or more than one person simultaneously receiving services at the HO but paying as a single customer.

- Allow Class I HOs to have no more than five visits per day -- with no more than one customer at a time -- with a Zoning Certificate (ZC).
- Allow Class II HOs to have a maximum of ten visits per day -- with no more than four customers at a time -- with an Administrative Use Permit (AUP) subject to specific findings that address impacts on pedestrian and bicyclist safety, as well as parking availability.
- Create a Class III HO category to allow more than ten visits per day – with no more than four customers at a time – with a Use Permit / Public Hearing (UP(PH)) subject to specific findings that address shipping as well as impacts on pedestrian and bicyclist safety and parking availability.

Recommendations reclassify HO categories to numerical classes (i.e. Class I, II or III) for consistency with conventions currently used in the BMC and to reflect levels of activity. Proposed amendments cap the number of visits allowed with a Class I (formerly Low-Impact) or Class II (formerly Moderate-Impact) HO permit, and introduce a Class III HO category to consider HOs that require more than 10 visits per day. With these changes, the Teaching-Related HO category can be eliminated because this use can be classified as either Class I, II, or III depending on the number and type of customer visits.

2. Non-Resident Employees

- Limit operation/ownership of all HOs to residents of the subject property.
- Allow one non-resident employee to work on-site for Class II and Class III HOs.

Current regulations do not allow for non-resident employees. The recommended amendments provide flexibility to Class II and III HOs by allowing for one on-site, non-resident employee. Proposed language clarifies that a resident must operate and own the HO.

3. Goods and Products, Materials, and Shipping

- Allow business-related activities, including storage, services, and repairs on-site. Do not allow these activities outdoors.
- Allow shipping and handling by a third-party from the HO for Class III.
- Clarify how hazardous material are defined by the City of Berkeley.

Current regulations prohibit “storage, service, repair, handling or transport of goods or products” at the subject premises. However, these activities, when conducted indoors, are integral to the operation of some HOs. The recommended amendments broaden allowable home business-related activities, clarify restrictions on outdoor activities and define hazardous materials. In addition, shipping and handling by a third-party is allowed from the subject residence with a Class III HO permit, subject to specific findings that address impacts on pedestrian and bicyclist safety, as well as parking availability. Class I and II HOs must visit a third-party facility for shipping services to limit potential neighborhood impacts.

4. Accessory Buildings & Accessory Dwelling Units (ADU)

- Allow HOs in Accessory Buildings and ADUs.
- Apply the square footage limitation for HOs (total area and percentage of the dwelling) to Accessory Buildings and ADUs.

Current regulations limit HO operations to a Dwelling Unit or Group Living Accommodation room. The recommended amendments provide flexibility on the location of a HO while maintaining the expectation that they are incidental to the main residential use.

5. Advertising Signs & Visiting Hours

- Add language to prohibit onsite signs advertising the HO.
- Establish hours of operation from 10am - 8pm for customer visits for all HOs.

Currently, the ordinance contains no specifications for advertising signs and lists customer visiting hours for Teaching-Related HOs only. The recommended amendments reduce impacts to neighbors by prohibiting onsite signage and mirroring the noise ordinance for hours of operation across all HO categories.

6. Enforcement Protocol & Findings

- Modify “Complaints and Imposition of Conditions” to clarify the process for submitting and addressing grievances for all HO categories.
- Amend “Findings” to provide guidance on identifying potential impacts of shipping from the HO.

Currently, HO compliance is in many ways voluntary and often enforced based on complaints. Recommended amendments clarify protocols and process for all categories to both prevent and address potential grievances.

7. Home Occupation Definition

- Amend the definition of “Home Occupation” to specify that HOs can operate in Accessory Buildings and Accessory Dwelling Units, and to include distinctions between Class I, II, and III HOs.
- Remove the definition of “Home Occupation, Teaching-Related.”

The recommended amendments clearly define and distinguish the three HO classes.

8. Restructure and Reformat Chapter

- Consolidate repetitive language.
- Remove sections “Home Occupations in Rental Unit” and “Medical Cannabis Residential Cultivation.”
- Consolidate all “Findings” for HOs to the Home Occupations chapter.
- Rename Section 23C.16.010 as “General Requirements,” Section 23C.16.020 as “Permit Requirements,” and Section 23C.16.030 as “Findings.”

The recommended amendments improve the clarity and readability of the Chapter.

9. Uses Permitted Tables

- Modify Uses Permitted tables for all Residential districts, the C-W, and MU-R to remove the Teaching-Related HO category, revise the level of discretion for Class II (formerly Moderate-Impact) HOs from UP(PH) to AUP, add a category to allow Class III with a UP(PH), and merge Teaching-Related HOs into the other classifications.
- Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, and C-DMU to include Class I, Class II and Class III Home Occupations.

Currently Home Occupations are not permitted in commercial district with the exception of the C-W. Updates allow HOs wherever residential uses are permitted.

For more detail on the specific changes related to each category presented above, see the website link to the 2018 and 2020 Planning Commission staff reports (at the end of this report).

BACKGROUND

On December 6, 2011, City Council referred to the City Manager a set of zoning ordinance amendments to consider reducing the level of discretion for Moderate-Impact HOs and streamline the permitting process for all HOs. Planning Commission considered this referral, held two public hearings and recommended amendments to City Council, reflecting current practices and needs of home-based businesses operating in Berkeley.

Zoning Regulation History

Prior to the Zoning Ordinance update in 1999, Moderate-Impact HOs that involved non-resident employees, customer visits, or storage of products on premises were allowed with an AUP. Staff and the Planning Commission recommended maintaining this level of discretion; however, the Zoning Adjustments Board proposed and Council adopted a UP(PH) for Moderate Impact HOs at that time. In 2006, the Ordinance was amended to include Teaching Related HOs with issuance of an AUP.

Home Occupation Permit Application History

Low-Impact HOs are often thought of as home office businesses; however, they also include businesses such as dog walking, cottage food production, graphic designing, jewelry-making, and life-coaching. From January to September 2018, the City approved approximately 116 ZCs for Low-Impact HOs (e.g. home offices, dog walking, jewelry-making, and floral arrangement). In comparison, from 2006 to 2018, the City only approved six AUPs for Teaching-Related HOs and did not receive any UP(PH) applications for Moderate-Impact HOs. Based on public input, inquiries to the Planning Department and personal anecdotes, there is reason to believe that permit activity for HOs in Berkeley may inaccurately represent existing business inventory and operations, since some businesses do not register with the City.

ENVIRONMENTAL SUSTAINABILITY

The proposed zoning amendments will enable more individuals to establish legal businesses and work from home, and to serve customers close to their own place of work or residence. Working from home reduces commute time, contributes to quality of life, and may allow for more sustainable transportation choices (e.g. walking, biking) when obtaining neighborhood-based products and services.

RATIONALE FOR RECOMMENDATION

Since the 2011 Council referral, technology and business models have evolved to demand a more flexible set of regulations that meet the long-standing needs of existing and of emerging HOs. The proposed Zoning Ordinance amendments would update the BMC to follow best practices for home businesses, set thresholds, and establish regulations to address potential impacts to neighbors and abutting properties. Amendments address levels of discretion and reformat the HO chapter for clarity.

ALTERNATIVE ACTIONS CONSIDERED

Council could take no action, in which case the Zoning Ordinance would retain existing regulations for HOs.

CONTACT PERSON

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Attachments:

1. Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts
2. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
3. Planning Commission Meeting Minutes – September 16, 2020
4. Public Hearing Notice

Links:

1. Planning Commission Staff Report – September 16, 2020
(https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2020-09-16_Item%209_with%20Attachments.pdf)
2. Planning Commission Staff Report – November 7, 2018
(https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2018-11-07_Item%2010.pdf)

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.16 AND AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23E.84.090, 23D.16.030, 23D.20.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030, 23E.64.030, 23E.84.030, AND 23F.04.10 TO MODIFY THE HOME OCCUPATIONS ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.16 [Home Occupations] is amended to read as follows:

Chapter 23C.16: Home Occupations

Sections:

23C.16.010 ~~General Requirements Home Occupations~~

23C.16.020 ~~Permit Requirements Home Occupations Classifications Low Impact Home Occupations Permitted by Right Subject to Business License~~

23C.16.030 ~~Findings Moderate Impact Home Occupations Subject to Use Permit~~

23C.16.040 Complaints and Imposition of Conditions

~~23C.16.050 Home Occupation in Rental Unit~~

~~23C.16.060 Medical Cannabis Residential Cultivation~~

23C.16.010 General Requirements ~~Home Occupations~~

A. The establishment of a Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a ~~Dwelling Unit primary residence~~, but rather shall be considered a lawful Incidental Use thereof.

B. ~~Home Occupations are subject~~ allowed pursuant to Chapter 23C.16.020 and the following requirements:

~~No Home Occupation which involves a Firearm/Munitions Business may be allowed.~~

1. A Home Occupation is allowed as an incidental use within a Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room.
2. No Firearm/Munitions Business may operate as a Home Occupation.
3. Customer visits are not allowed in the ES-R District.

4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room from which it operates.
5. Only residents of the subject Dwelling Unit, Accessory Dwelling Unit or Group Living Accommodation room may operate a Home Occupation business.
6. Customer visits may occur only between the hours of 10 a.m. and 8 p.m.
7. Storage, services, or repairs may not be conducted outdoors.
8. A Home Occupation shall not involve hazardous materials or waste as defined by Section 15.08.060.
9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line, or party walls of multi-unit building, of the subject premises.
10. No on-site signs identifying or advertising the Home Occupation are allowed.
11. The operator of a Home Occupation shall pay gross receipts taxes pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.
- 4-12. A lessee in possession of a property may apply for a Permit without the property owner's signature; however Home Occupations are not exempt from conditions in rental and lease agreements.

~~C. No Home Occupation which involves customer visits may be allowed in the ES-R District.~~

23C.16.020 Permit Requirements Low Impact Home Occupations Permitted by Right

Subject to Business License(See 23F.04 for Home Occupation definitions.)

- A. A Class I Home Occupation is allowed subject to a Zoning Certificate.
- B. A Class II Home Occupation is allowed subject to issuance of an Administrative Use Permit.
- C. A Class III Home Occupation is allowed subject to issuance of a Use Permit (Public Hearing).

~~A Home Occupation which meets all of the following conditions shall be allowed by right in any Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~A.—Such Home Occupations must:~~

- ~~1.—Be conducted entirely within the dwelling unit or group living accommodation room;~~
- ~~2.—Occupy less than four hundred (400) square feet and less than twenty percent (20%) of the dwelling unit or group living accommodation room;~~

~~B.—Such home occupations may not:~~

- ~~1.—Involve customer visits to the subject premises;~~
- ~~2.—Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~
- ~~3.—Involve hazardous materials or processes; or~~
- ~~4.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises.~~

23C.16.030 Findings- Moderate Impact Home Occupations Subject to Use Permit

In addition to the findings set forth in Section 23B.28.050 and Section 23B.32.040, in order to approve an Administrative Use Permit for a Class II Home Occupation or a Use Permit (Public Hearing) for a Class III Home Occupation, the Zoning Officer or Board must find, based on the circumstances of the specific use and property:

1. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the Home Occupation; and
2. The degree of shipping from the subject residence will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation; and

3. If the proposed Home Occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation.

~~A.— A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~1.— Such Home Occupations must:~~

~~a.— Be conducted entirely within the dwelling unit or group living accommodation room;~~

~~b.— Operate within the hours of 10 a.m. and 10 p.m.; and~~

~~c.— Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;~~

~~2.— Such home occupations may not:~~

~~a.— Involve more than four students at a time;~~

~~b.— Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~

~~c.— Involve hazardous materials, or processes; or~~

~~d.— Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.~~

~~B.— All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

23C.16.040 Complaints and Imposition of Conditions

~~A.—Complaints regarding low-impact Hhome Ooccupations are subject to review, the imposition of conditions, or revocation may be made to the Zoning Officer for review and enforcement action.~~

~~B.—If written complaints that include factual information on detrimental effects to the neighborhood~~

~~A. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.~~

~~B. The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing from a Home Occupation are received, the Board may schedule a public hearing to review the Home Occupation. After such hearing the Board may approve a Use Permit to impose conditions upon Class I and II the Home Occupations, and may impose conditions as may be necessary to prevent detrimental effects or may initiate revocation proceedings, or may revoke the permit in the event adequate conditions of approval are not available.~~

~~The Zoning Adjustments Board shall review documented complaints, business operations, and other factors when reviewing Class III Home Occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available.~~

~~Furthermore, the City may address violations by sending an administrative citation issued pursuant to Chapter 1.28.~~

23C.16.050 Home Occupation in Rental Unit

~~Any application for a Home Occupation may be filed by a lessee in possession of the property without the consent of the owner of record of the legal title and the application may be accepted without such owner's signature. In the case of a home occupation which requires a Use Permit, the owner shall be given notice of the proposed home occupation, in conformance with Section 23B.32.020.D.~~

23C.16.060 Medical Cannabis Residential Cultivation

~~No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property.~~

Section 2. That Berkeley Municipal Code Section 23E.84.090 [Findings] is amended as follows:

23E.84.090 Findings

A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

B. A proposed use or structure must:

1. Be consistent with the purposes of the District;
2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
3. Be consistent with the adopted West Berkeley Plan;
4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
5. Be designed in such a manner to be supportive of the character and purposes of the District; and
6. Be able to meet any applicable performance standards as described in Section 23E.84.070.H.

C. In order to approve a Use Permit under Section 23E.84.040, the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:

1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.84.040.I or by reason of having been established after July 6, 1989;

2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.

D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section 23E.20.090 and must also make the following findings:

1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;

2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that they will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;

3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:

1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;

2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other

appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.

F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit 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.

G. In order to approve an Administrative Use Permit or Use Permit for ~~the establishment or expansion of a Hhome O~~ccupation with customer visits and/or shipping and handling of goods, the Zoning Officer or Board must must find:

~~1.—The degree of customer visits and/or handling of goods, taken as a whole, will not cause a significant detrimental impact on the availability of parking spaces in the location the home occupation is being established;~~

~~2.—If the proposed home occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the home occupation is being established, make the findings set forth in Section 23C.16.030.~~

H. In order to approve a Use Permit for the establishment or expansion of a school, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;

2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;

3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.

I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.

J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:

1. The manufacturer is capable of meeting all applicable performance standards; and
2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.

L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the

proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.

2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 3. That Berkeley Municipal Code Section 23F.04.010 is amended to revise the definitions of “Home Occupation” and “Home Occupation, Teaching-Related” as follows:

23F.04.010 Definitions

Home Occupation: A business use conducted on ~~residential~~ property developed with Residential use, which is incidental and secondary to the Residential use, does not change the residential character thereof, 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 ~~inhabitants~~ 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 visits per day, with no more than one customer at a time. This class does not allow shipping of finished goods from the subject residence.
2. **Class II Home Occupation** - Involves no more than ten visits per day, with no more than four customers at a time and no more than one non-resident engaging in business-related

activities on-site. This class does not allow shipping of finished goods from the subject residence.

3. **Class III Home Occupation** - Involves more than ten visits per day, with no more than four customers at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of finished goods from the subject residence.

1. ~~**Home Occupation, Teaching-Related:** A home-based business as defined under the Home Occupation definition that provides academic and/or artistic tutoring or lessons, excluding schools, studios and conservatories.~~

Section 4. That the “Accessory Uses and Structures” section of Table 23D.16.030 in Chapter 23D.16 Section 23D.16.030 of the Berkeley Municipal Code is amended to read as follows:

23D.16.030 Uses Permitted

Table 23D.16.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	

Table 23D.16.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact Class I	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related Class II	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>
Moderate Impact Class III	UP(PH)	Subject to the requirements of Section <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

Section 5. That the “Accessory Uses and Structures” section of Table 23D.20.030 in Chapter 23D.20 Section 23D.20.030 of the Berkeley Municipal Code is amended to read as follows:

23D.20.030 Uses Permitted

<i>Table 23D.20.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required yards
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>

Table 23D.20.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Low Impact <u>Class I</u>	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related <u>Class II</u>	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact <u>Class III</u>	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

Section 6. That the “Accessory Uses and Structures” section of Table 23D.28.030 in Chapter 23D.28 Section 23D.28.030 of the Berkeley Municipal Code is amended to read as follows:

23D.28.030 Uses Permitted

Table 23D.28.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	

Table 23D.28.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact <u>Class I</u>	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related <u>Class II</u>	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact <u>Class III</u>	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>

Table 23D.28.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Stables for Horses	AUP	

Section 7. That the “Accessory Uses and Structures” section of Table 23D.32.030 in Chapter 23D.32 Section 23D.32.030 of the Berkeley Municipal Code is amended to read as follows:

23D.32.030 Uses Permitted

Table 23D.32.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>

Table 23D.32.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact Class I	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related Class II	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>
Moderate Impact Class III	UP(PH)	Subject to the requirements of Section <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

Section 8. That the "Accessory Uses and Structures" section of Table 23D.36.030 in Chapter 23D.36 Section 23D.36.030 of the Berkeley Municipal Code is amended to read as follows:

23D.36.030 Uses Permitted

Table 23D.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks

Table 23D.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Home Occupations Low Impact Class I Moderate Impact, teaching-related Class II Moderate Impact Class III	ZC AUP UP(PH)	<u>Subject to the requirements of Chapter 23C.16</u> If the requirements of Section 23C.16.020 are met Subject to the requirements of Section 23C.16.030.A Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

Section 9. That the “Accessory Uses and Structures” section of Table 23D.40.030 in Chapter 23D.40 Section 23D.40.030 of the Berkeley Municipal Code is amended to read as follows:

23D.40.030 Uses Permitted

Table 23D.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	

Table 23D.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> .
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making of applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact Class I	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related Class II	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>

Table 23D.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Moderate Impact <u>Class III</u>	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

Section 10. That the “Accessory Uses and Structures” section of Table 23D.44.030 in Chapter 23D.44 Section 23D.44.030 of the Berkeley Municipal Code is amended to read as follows:

23D.44.030 Uses Permitted

Table 23D.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	

Table 23D.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact Class I	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related Class II	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>
Moderate Impact Class III	UP(PH)	Subject to the requirements of Section <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>

Table 23D.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

Section 11. That the “Accessory Uses and Structures” section of Table 23D.48.030 in Chapter 23D.48 Section 23D.48.030 of the Berkeley Municipal Code is amended to read as follows:

23D.48.030 Uses Permitted

Table 23D.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>

Table 23D.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact Class I	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related Class II	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>
Moderate Impact Class III	UP(PH)	Subject to the requirements of Section <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	Prohibited	

Table 23D.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

Section 12. That the “Accessory Uses and Structures” section of Table 23D.52.030 in Chapter 23D.52 Section 23D.52.030 of the Berkeley Municipal Code is amended to read as follows:

23D.52.030 Uses Permitted

Table 23D.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	

Table 23D.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		<u>Subject to the requirements of Chapter 23C.16</u>
Low Impact <u>Class I</u>	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related <u>Class II</u>	AUP	Subject to the requirements of Section <u>23C.16.030.A</u>
Moderate Impact <u>Class III</u>	UP(PH)	Subject to the requirements of Section <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

Section 13. That the “Uses Permitted in Residential Districts” section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code is amended to read as follows:

23E.36.030 Uses Permitted

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E . Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
		within University Avenue Overlay Mixed Use areas
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer people	 ZC	Changes of use from an existing dwelling unit

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 14. That the “Uses Permitted in Residential Districts” section of Table 23E.40.030 in Chapter 23E.40 Section 23E.40.030 of the Berkeley Municipal Code is amended to read as follows:

23E.40.030 Uses Permitted

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agricultures	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 15. That the “Uses Permitted in Residential Districts” section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

23E.44.030 Uses Permitted

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements under Section 23E.44.080
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23E.44.080

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 16. That the “Uses Permitted in Residential Districts” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code is amended to read as follows:

23E.48.030 Uses Permitted

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with	AUP	Subject to making applicable findings in Section 23C.24.070

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
requirements under Section 23C.24.050		
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070.F
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 17. That the “Uses Permitted in Residential Districts” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code is amended to read as follows:

23E.52.030 Uses Permitted

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E
<u>Home Occupations</u> <u>Class I</u>	<u>ZC</u>	<u>Subject to the requirements of Chapter 23C.16</u>

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more people	AUP	
New construction	UP(PH)	

Section 18. That the “Uses Permitted in Residential Districts” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code is amended to read as follows:

23E.56.030 Uses Permitted

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 19. That the “Uses Permitted in Residential Districts” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code is amended to read as follows:

23E.60.030 Uses Permitted

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
<u>Home Occupations</u>		<u>Subject to the requirements of Chapter 23C.16</u>
<u>Class I</u>	<u>ZC</u>	
<u>Class II</u>	<u>AUP</u>	

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 20. That the “Residential and Related Uses” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code is amended to read as follows:

23E.64.030 Uses Permitted

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Additions, Major Residential	AUP	See definition in Sub-title <u>23F</u> . Subject to required finding under Section <u>23E.64.090.G</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to Development Standards under Section <u>23E.64.070</u>

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Group Living Accommodations	UP(PH)	Subject to Development Standards under Section <u>23E.64.070</u>
Home Occupations <u>Low Impact Class I</u> <u>Moderate Impact, teaching-related Class II</u> <u>Moderate Impact Class III</u>	ZC AUP UP(PH)	<u>Subject to the requirements of Chapter 23C.16</u> <u>If the requirements of Section 23C.16.020 are met</u> <u>Subject to the requirements of Section 23C.16.030.A</u> <u>Subject to the requirements of Section 23C.16.030.B</u>
Hospitals	UP(PH)	Subject to parking requirements; see Section <u>23E.64.080.F</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.070.C</u>
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section <u>23E.64.080.F</u>
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060

Section 21. That the “Residential and Related Uses” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

23E.68.030 Uses Permitted

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Uses Permitted in Residential Districts		

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	As per R-5 District	See Table 23D.44.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	AUP	
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, including multifamily developments	UP(PH)	Subject to the standards under Section 23E.68.060.F
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.68.060.F
<u>Home Occupations</u> <u>Class I</u>	<u>ZC</u>	<u>Subject to the requirements of Chapter 23C.16</u>

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
<u>Class II</u>	<u>AUP</u>	
<u>Class III</u>	<u>UP(PH)</u>	
Hospitals	UP(PH)	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to Section 23E.68.060.F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use of an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	Subject to Section 23E.68.070

Section 22. That the “Residential and Related Uses” section of Table 23E.84.030 in Chapter 23E.84 Section 23E.84.030 of the Berkeley Municipal Code is amended to read as follows:

23E.84.030 Uses Permitted

Table 23E.84.030		
Use and Required Permits		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Additions, Major Residential	AUP	See Definition in Sub-title <u>23F</u> . Subject to finding required under <u>23E.84.090.L</u> ; see limitations on location in Section <u>23E.84.060.G</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care Centers	UP(PH)	Subject to the findings in Section <u>23E.84.090.H</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes (Changes of Use)	ZC	Subject to parking requirements; see Section <u>23E.84.080.B</u>
Community Centers	UP(PH)	
Dwelling Units		See limitation on location in Section <u>23E.84.060.G</u> . Subject to development

Table 23E.84.030		
Use and Required Permits		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
		standards of Section <u>23E.84.070</u> and parking requirements in Section <u>23E.84.080.B</u>
1 – 4 Units	AUP	
5+ Units	UP(PH)	
Group Living Accommodations, subject to R-3 District Standards	UP(PH)	See limitations on location in Section <u>23E.84.060.G</u>
Home Occupations <u>Low Impact Class I</u> <u>Moderate Impact, teaching-related Class II</u> <u>Moderate Impact Class III</u>	ZC AUP UP(PH)	<u>Subject to the requirements of Chapter 23C.16</u> <u>If the requirements of Section 23C.16.020 are met</u> <u>Subject to the requirements of Section 23C.16.030.A</u> <u>Subject to the requirements of Section 23C.16.030.B</u>
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Libraries	UP(PH)	Subject to additional parking requirements; see Section <u>23E.84.080.B</u>
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section <u>23E.84.080.B</u>

Table 23E.84.030		
Use and Required Permits		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under <u>23E.84.090.H</u>
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section <u>23E.84.090.H</u>
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>

Section 23. 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.



Linda Maio
District 1

CONSENT CALENDAR
December 6, 2011

To: Honorable Mayor and Members of the City Council
From: Councilmember Linda Maio
Subject: Classify Home Occupation Activities Receiving Five or Fewer Visits as Moderate Impact Home Operation

RECOMMENDATION

Refer to the City Manager that the zoning code for Moderate Impact Home Operation (Moderate Impact HO) be amended to include home occupation activities receiving five or fewer visits weekly, requiring an AUP rather than a Use Permit with public hearing.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Years ago, the City changed the regulations to allow teaching, up to four students at a time, with a Moderate Impact HO, which is an AUP, rather than a Use Permit with public hearing. Zoning Code section 23C.16.030 reads as follows, and is applicable to home occupation activities receiving five or fewer visits weekly:

23C.16.030 Moderate Impact Home Occupations Subject to Use Permit

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
 - a. Be conducted entirely within the dwelling unit or group living accommodation room;
 - b. Operate within the hours of 10 a.m. and 10 p.m.; and
 - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:

- a. Involve more than four students at a time;
- b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
- c. Involve hazardous materials, or processes; or
- d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

Given that we permit 4 students at a time, which could amount to many more per day, enabling 5 visits or fewer per day with an HO designation, for other home occupation visitors seems eminently reasonable.

CONTACT PERSON

Linda Maio

District 1

(510) 981-7110



Planning Commission

1 **DRAFT MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING**
2 **September 16, 2020**

3 The meeting was called to order at 7:03 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6 **Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey,
7 Steve Martinot, Christine Schildt, Jeff Vincent (arrived at 7:20), Brad Wiblin, and Rob Wrenn.

8 **Commissioners Absent:** None.

9 **Staff Present:** Secretary Alene Pearson, Katrina Lapira, Paola Boylan, Alisa Shen, and
10 Jordan Klein.

11 **2. ORDER OF AGENDA:** No changes.

12 **3. PUBLIC COMMENT PERIOD:** 0

13 **4. PLANNING STAFF REPORT:**

- 14 • September 23 – Special Planning Commission Meeting cancelled
- 15 • September 30 – Special Planning Commission Meeting to continue public hearing on the
- 16 Draft Adeline Corridor Plan, if necessary
- 17

18 **Information Items:**

- 19 • None

20 **Communications:**

- 21 • September 3 – Staff, Meeting Updates
- 22 • September 3 – Carr, Southside Plan

23 **Late Communications:** *See agenda for links.*

- 24 • Supplemental Packet One
- 25 • Supplemental Packet Two
- 26 • Supplemental Packet Three (Read aloud at the meeting)

27 **5. CHAIR REPORT:**

- 30 • Mention of the climate change/ acknowledging the impacts of climate change especially
- 31 on communities of color

32
33 **6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the

34 items below, additional matters may be reported at the meeting.

- 35
- 36 • None

37 **7. APPROVAL OF MINUTES:**

38 Motion/Second/Carried (Wiblin/Martinot) to approve the Planning Commission Meeting

39 Minutes from September 2, 2020.

40

41 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None.

42 Abstain: None. Absent: None. (9-0-0-0)

43

44 **FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:**

- 45 • None

46 **AGENDA ITEMS**

47 **9. Action:** *Public Hearing: Home Occupations*

48 Staff discussed the proposed amendments to the Home Occupations ordinance, which focus on

49 modifications to enforcement protocols and updating definitions and findings, customer visits,

50 and shipping and receiving. The Planning Commission discussed levels of discretionary permits

51 related third- party shipping and receiving practices with regard to the potential impact to

52 residential neighborhood circulation.

53 **Public Comments: 2**

54 Motion/Second/Carried (Schildt/Krpata) to adopt staff’s recommendation with amendments

55 to lines 272 (removal of “receiving”) and lines 72 / 73 (addition of language that protects

56 bicycle access within the vicinity of the home occupation).

57

58 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:

59 None. Abstain: None. Absent: None. (9-0-0-0)

60

61 Motion/Second/Carried (Kapla/Wrenn) to close the public hearing at 7:59pm.

62

63 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:

64 None. Abstain: None. Absent: None. (9-0-0-0)

67

68 **10. Action:** *Public Hearing: DRAFT Adeline Corridor Plan*

69 Related to the draft plan, staff provided background information on the planning process, an
70 overview of the different chapters within the plan, noting stated goals and policies, and reviewed
71 related documents under review. After staff's presentation, the Planning Commission received
72 public comment.

73 **Public Comments: 32**

74 Motion/Second/Carried (Wrenn/Martinot) to continue the public hearing of the Draft Adeline
75 Corridor Plan to a Special Planning Commission meeting on September 30, 2020 and to
76 include language in the agenda that notes the guidelines for receiving public comment.

77

78 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes:
79 None. Abstain: None. Absent: None. (9-0-0-0)

80

81 **Members in the public in attendance: 70**

82 **Public Speakers: 37 speakers**

83 **Length of the meeting: 4 hours and 29 minutes**

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

Amendments to the Home Occupations Ordinance

The Department of Planning and Development is proposing to amend the Home Occupations Ordinance to reduce levels of discretion for Moderate Impact Home Occupations and streamline the permitting process for all Home Occupations.

The recommended Zoning Ordinance amendments affect the following Berkeley Municipal Code (BMC) Chapters: 23C.16, 23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, 23E.84, and 23F.04

The hearing will be held on, DECEMBER 15, 2020 at 6:00 p.m. A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **December 3, 2020. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Paola Boylan, Assistant Planner, Department of Planning and Development at pboylan@cityofberkeley.info.

Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info 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 981-6900 or clerk@cityofberkeley.info for further information.

Published: December 4, 2020 – The Berkeley Voice
BMC Section 22.04.020 (Amendment — Procedures required — Planning Commission and City Council Authority) states “the council shall set a public hearing on the proposed amendment.”)

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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 December 3, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk

