



Office of the City Manager

PUBLIC HEARING  
October 11, 2022

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

### RECOMMENDATION

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

### SUMMARY

This report presents Zoning Ordinance amendments recommended to improve consistency between the Title 23 Zoning definitions of Amusement Devices, Amusement Device Arcades (Arcades) and Incidental Use<sup>1</sup>, and apply the permit structure for Commercial Recreation Centers to Amusement Device Arcades.

### FISCAL IMPACTS OF RECOMMENDATION

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

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#### <sup>1</sup> **BMC Chapter 23.502.020 Defined Terms:**

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

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

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

**CURRENT SITUATION AND ITS EFFECTS**

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

**Table 1: Avenue Commercial Permit Threshold for CRCs**

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

\*Outdoor uses require UP(PH)

**Table 2: Neighborhood Commercial Permit Threshold for CRCs**

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

\*Outdoor uses require UP(PH)

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

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

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

**1. Regulate Arcades as Commercial Recreation Centers**

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

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

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

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

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

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see Error! Reference source not found.(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		
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>													
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	Error! Reference source not found..A	
See Error! Reference source not found..A													
Amusement Device Arcade	UP(PH)#	UP(PH)#	NR	NR	NR	UP(PH)#	NR	NR	UP(PH)#	UP(PH)#	UP(PH)	Error! Reference source not found..B	
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	-	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	Error! Reference source not found..B.3; Error! Reference source not found..B.2;  Error! Reference source not found.	
Commercial Recreation Center	See Error! Reference source not found..A												

**Figure 2.** Existing CRC Regulations

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

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for Amusement Device Arcades

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C-SO
C-AC

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**Avenue Commercial**

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

**Manufacturing District**

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

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

~~23.302.070 B. Amusement Arcades~~

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

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

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

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

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

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

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

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

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

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

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

**BACKGROUND**

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

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

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

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

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

Attachments:

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



ORDINANCE NO. -N.S.

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

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

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

**Section 23.302.070 Use-Specific Regulations**

B. Amusement Devices Arcade.

~~1. *Distance from Schools.* An Amusement device arcade may not be established within a radius of 600 feet of a primary or secondary school.~~

~~*Incidental Use.* Table 23.302-5 shows permits required and maximum number of amusement devices allowed as an incidental use in the non-residential districts. Amusement Devices up to 25 percent of total net floor area of the primary use are allowed as an incidental use with a Zoning Certificate. Amusement Devices are prohibited in the M Manufacturing District and MM Mixed Manufacturing District.~~

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

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

Section 2. That the line named Amusement Device Arcade in Table 23.204-1, Allowed Uses in Commercial Districts, within Berkeley Municipal Code Section 23.204.020, Allowed Land Uses, is amended as follows:

**Section 23.204.020 Allowed Land Uses - Table 23.204-1, Allowed Uses in Commercial Districts**

Amusement Device Arcade	See Error! Reference source not found..A										Error! Reference source not found..B
	UP(PH)S	UP(PH)S	NP	NP	NP	UP(PH)S	NP	NP	UP(PH)S	UP(PH)S	

Section 3. That the line named Amusement Device Arcade in Table 23.206-1, Allowed Uses in the Manufacturing Districts, within Berkeley Municipal Code Section 23.206.020 Allowed Land Uses and Permit Requirements is amended as follows:

**Chapter 23.206.020 Allowed Land Uses - Table 23.206-1, Allowed Uses in the Manufacturing Districts**

Amusement Device Arcade	NP	NP	ZC AUP	ZC-AUP	Error! Reference source not found..B
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Section 4. That Berkeley Municipal Code Section 23.502.020.A.17 definition of “Amusement Device Arcade” is amended as follows:

**Chapter 23.502.020 Defined Terms**

A. “A” Terms...

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

Section 5. 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

DATE: October 7, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner  
Katrina Lapira, Assistant Planner

SUBJECT: Business Support Zoning Amendment Referrals – Amusement Device  
Arcades and Arts District Overlay Expansion

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### RECOMMENDATION

Staff recommends that the Planning Commission discuss proposed modifications, provide feedback, and request staff draft Zoning Ordinance amendments for Planning Commission consideration.

### BACKGROUND

City Council has referred to the Planning Commission five referrals that support Berkeley businesses and bolster Berkeley's commercial districts. These referrals range in scope from broad suggestions to targeted requests, but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses. This report analyzes and provides recommendations for two referrals:

1. **Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19)**
2. **Expanding the Downtown Arts District (Mayor Bates, 10/18/16)**

### DISCUSSION

The overarching goal of these referrals is to provide the flexibility needed by businesses to adapt to a changing marketplace. This section provides an overview of each referral item addressed, existing conditions, staff's analysis, and proposed modifications and recommendations for discussion.

### **Amusement Device Arcades**

The Berkeley Municipal Code (BMC) currently prohibits Amusement Device Arcades<sup>1</sup> (Arcades) in the Elmwood Commercial district (C-E district). In June of 2019, City Council referred to the Planning Commission consideration of levels of discretion for Arcades in the C-E district, recommending that they be re-examined and relaxed (See Link 1). **Table 1** shows the permit specifications and thresholds recommended for the C-E district by the referral.

**Table 1: Permit Threshold Suggested for Arcades by the Referral for the Elmwood Commercial District**

Size Threshold (square feet)	Permit Required <sup>2</sup>
Under 3,000	ZC
Over 3,000	AUP

For a more comprehensive review of this referral, staff reviewed proposed thresholds and existing permit requirements for Arcades throughout all commercial and manufacturing districts in Berkeley. Findings, proposed modifications, and rationale are presented below.

**1. Arcades as Commercial Recreation Centers<sup>3</sup>**

- **Remove Arcades from Uses Permitted Tables and instead recognize and regulate the Use as a Commercial Recreation Center.** (*Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R Districts*)

Rationale: As retail continues to shift towards online platforms, business models are evolving to provide activity-based experiences that attract customers. Commercial Recreation Centers (CRC) are non-theater establishments, where recreation facilities are offered or amusement devices are provided as a principal commercial activity. Providing clear guidance on establishing such businesses is one way the City has supported emerging

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<sup>1</sup>**Amusement Device:** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

**Amusement Device Arcade:** An establishment which contains six (6) or more Amusement Devices. An Amusement Device Arcade is a Commercial Recreation Center irrespective of whether such machines are the principal commercial activity of an establishment.

<sup>2</sup> **ZC** – Zoning Certificate | **AUP** – Administrative Use Permit | **UP(PH)** – Use Permit (Public Hearing)

<sup>3</sup>**Commercial Recreation Center:** Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This may include, but is not limited to, bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses and amusement device arcades.

business models. In 2018, City Council adopted updated regulations that set thoroughly researched and studied thresholds for CRCs. Updates provided a simpler permitting process to CRCs by establishing a tiered permitting structure that requires lower levels of discretion for smaller businesses, thereby reducing start-up costs and shortening permitting timelines. **Tables 2 and 3** show the distinct thresholds established per General Plan designation, which coincide with various zoning districts according to purpose and intensity.

**Table 2: Avenue Commercial Permit Threshold for CRCs**

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

\*Outdoor uses require UP(PH)

**Table 3: Neighborhood Commercial Permit Threshold for CRCs**

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

\*Outdoor uses require UP(PH)

In contrast to the rational permitting delineated for CRCs in the tables above, Arcades are defined by the BMC as a type of CRC, yet they are regulated separately—in some districts they are prohibited, in others they require a UP(PH) regardless of the proposed establishment's square footage. The defined terms for these two categories overlap significantly and reference each other. CRC regulations provide the flexibility requested in this referral, while continuing to provide safeguards for the surrounding community. In addition, CRC regulations provide a clear path to establishing businesses that offer activity based experiences. Staff's proposed modifications would extend the same path to Arcades. Therefore, staff recommends recognizing and regulating Arcades as CRCs.

- **Remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school. (BMC Section 23E.16.050)**

Rationale: Special Provisions<sup>4</sup> were set in place in the 1990s to prevent Amusement Device Arcades from establishing too close to primary and

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<sup>4</sup>**Special Provisions** - No Amusement Device Arcade shall be established within a radius of six hundred (600) feet of any primary or secondary school. This applies to all districts and permits.

secondary schools. However, in the 21st century, the advancement of technology has brought gaming opportunities to people’s households and fingertips through computers, gaming consoles, and cell phones among other devices. The City of Berkeley is among one of two cities with this restriction, and of the two, it is twice as strict by requiring a 600 ft. radius versus 300 ft. (City of San Diego) (See Attachment 3). Removing this requirement is not of concern to the Berkeley Police Department and will provide a smooth transition to recognizing Arcades as CRCs.

**2. Amusement Devices Incidental to a Permitted Use**

- **Change the maximum number of Amusement Devices allowed as an incidental use to a permitted use from three to five.** (*Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, MU-LI, and MU-R Districts*)

Rationale: Current regulations allow up-to three Amusement Devices incidental to an established use with either an AUP or a UP(PH), depending on the district. At the same time, Arcades are defined as establishments with six or more Amusement Devices - creating an arbitrary gap between the two use types. Therefore, staff recommends allowing up to five Amusement Devices as an incidental use to a permitted use, which would provide consistency throughout the Zoning Ordinance and set a threshold similar to our neighboring City of Albany (See Attachment 3).

- **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC).** (*Modify Uses Permitted Tables in zones C-1, C-T, C-W, C-DMU, MU-LI, and MU-R Districts*)

*(See discussion below)*

- **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from a Use Permit Public Hearing (UP(PH)) to a Zoning Certificate (ZC).** (*Modify Uses Permitted Tables in zones C-N, C-E, C-NS, C-SA, and C-SO Districts*)

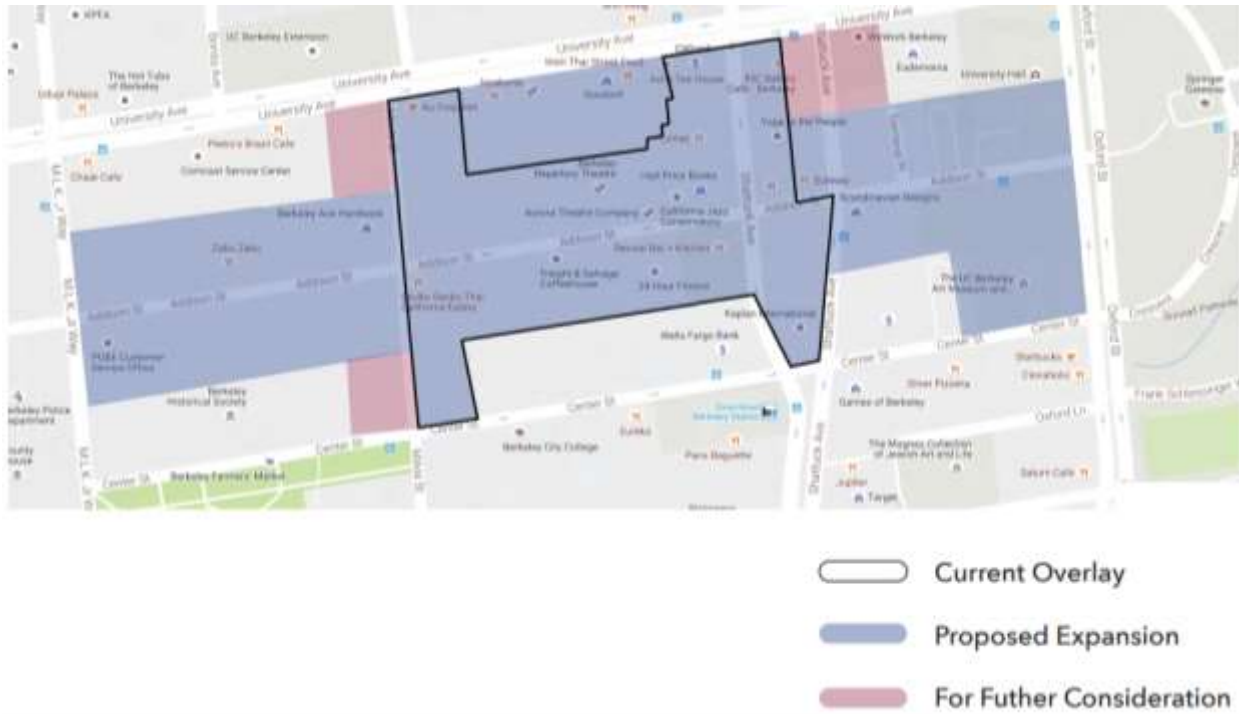
Rationale: Current regulations require businesses in Berkeley to obtain an AUP or UP(PH), depending on the district, to add a limited number of Amusement Devices as an incidental use. In a time when emerging business models focus on creating activity-based experiences for customers, Amusement Devices can provide an attractive service to patrons. The proposed modification would lower levels of discretion for up to five devices to a ZC, bringing Berkeley into alignment with other cities in order to retain and attract existing and new businesses (See Attachment 3).

**Downtown Arts District Overlay**

Established in 2000, the purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and other commercial uses that generate pedestrian

vitality in the downtown to encourage a broader economic revitalization of the area. Since that time, several theater arts, fine dining, and related uses have become established or expanded in the area. In 2016, City Council asked the Planning Commission to explore expanding the existing physical boundaries of the ADO to include all buildings with street frontage along Addison Street from Martin Luther King (MLK) Way through Oxford Street and portions along University Avenue, Shattuck Avenue, and Center Street (See Link 2 and **Figure 1**).

**Figure 1. Arts District Overlay**



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

Staff reviewed the overlay boundaries and allowable uses to propose recommendations that meet the purposes of the ADO and the underlying zoning districts. Findings, recommendations, and rationale are presented below.

**1. Maintain the existing boundaries of the ADO.**

Rationale: Staff’s proposal to maintain the existing boundaries takes into consideration the role of the ADO as a development tool, the pattern of existing uses, and development constraints in the areas within the referral’s proposed expanded boundary.

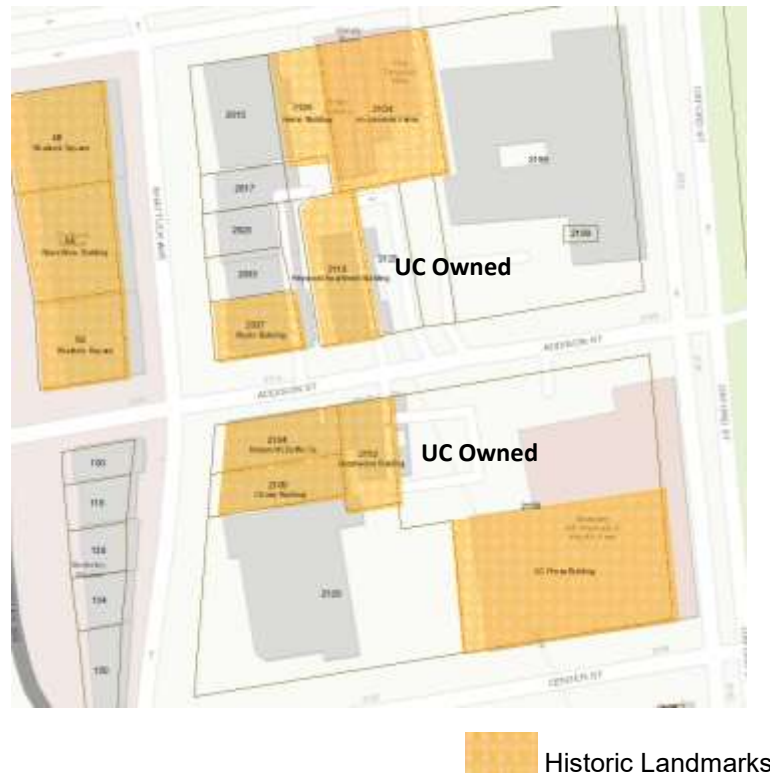
The Downtown Mixed-Use (C-DMU) District underlies the ADO. The primary zoning distinction between the C-DMU and the ADO is the regulation placed on ground floor uses. Currently, the ADO requires an AUP for ground floor office uses and Food Service Establishments focused on offsite consumption. The C-DMU requires a ZC for these same uses. The proposed expansion would incorporate more of the C-DMU, and given the existing provisions, would create legally non-

conforming uses in existing ground floor spaces with office uses and take-out only Food Service Establishments.

**Expansion from Milvia Street to MLK Way** - The area along Addison Street, from Milvia Street to MLK Way, is primarily built out, with new mixed-use developments and existing office buildings that support small residential and food service uses. Along this stretch, about 50% of the ground floor street frontage is dedicated office space. Under the ground floor restrictions of the ADO, these office spaces would be subject to AUP requirements if a new tenant were to require a change in use to the previously described food service or office use. Given the limitations of existing spaces, this proposal may create an unnecessary burden.

**Expansion from Shattuck to Oxford and along University Avenue** - The referral's proposed boundary expansion includes new cultural institutions like the UC Theatre Music Hall and the Berkeley Arts Museum and Pacific Film Archive (BAMPFA). However, a number of parcels along Addison Street, from Shattuck to Oxford Street, are owned by the University of California (UC) and are thus not subject to the City's zoning regulations. In addition, the referral's proposed expanded area includes several historic landmarks that already require additional review as part of the development process, shown in the figure below in orange. Added ground floor requirements imposed by the ADO could further complicate and deter the redevelopment of these historical lots. For these reasons, expanding the ADO to include this stretch of University Avenue and Addison Street would be ineffective in guiding development in this area.

**Figure 2.** Addison Street - UC Owned Parcels and Historic Landmarks





- 2. Remove the provision requiring an Administrative Use Permit (AUP) for Food Service Establishments that primarily provide food for offsite consumption in the Downtown Arts District Overlay (Modify BMC Sections 23E.68.030 and 23E.68.040)**

Rationale: Food Service Establishments in the C-DMU are regulated by a tiered permitting system based on gross square footage. As previously mentioned, the ADO places additional restrictions on Food Service Establishments. These restrictions could create barriers to prospective businesses and are also incompatible with the model under which current businesses are operating, as a result of the COVID-19 pandemic. Restaurants have shifted towards take-away models to keep afloat during the public health crisis, regardless of whether their previous primary focus was to be a sit-down or take-away establishment. Removing the additional restriction and treating all Food Service Establishments consistently throughout the C-DMU accommodates the ever-changing nature of the food service industry and simplifies the review process for prospective businesses.<sup>5</sup>

- 3. Explore programmatic incentives adopted by other cities to encourage more art- and culture-focused establishments to locate within the existing ADO.**

Rationale: There is little distinction between provisions in the ADO and the C-DMU in the Zoning Ordinance. To encourage the location of cultural institutions and supportive services within the ADO, a variety of programmatic incentives could be explored for adoption in the future. The City of Oakland published a report that outlines strategies used by other jurisdictions across the country to strengthen arts and cultural districts. Land Use Planning staff will share this report with Berkeley's Office of Economic Development and will support efforts to bolster the ADO through these types of strategies in the future (See Link 3).

## **NEXT STEPS**

Based on the Planning Commission's feedback, staff will draft Zoning Ordinance amendments for Planning Commission's consideration.

## **ATTACHMENTS**

1. Planning Commission Staff Report (without attachments) - July 1, 2020
2. Planning Commission Meeting Minutes - July 1, 2020
3. Matrix of Arcade Regulations

## **LINKS**

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<sup>5</sup> In 2018, the zoning ordinance was amended and largely removed the distinction among food service uses. This regulation is anomalous.

1. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19) - [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/06\\_June/Documents/2019-06-25\\_Item\\_37\\_Zoning\\_Ordinance\\_Modification.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx)
2. Expanding the Downtown Arts District (Mayor Bates, 10/18/16) - [https://www.cityofberkeley.info/Clerk/City\\_Council/2016/10\\_Oct/Documents/2016-10-18\\_Item\\_24\\_Expanding\\_the\\_Downtown\\_Arts.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_24_Expanding_the_Downtown_Arts.aspx)
3. City of Oakland - Arts and Culture Research Compilation (2017) - <https://cao-94612.s3.amazonaws.com/documents/Art-Culture-Best-Practices-and-Case-Studies-March-2017.pdf>



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
October 7, 2020**

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

**Location:** Virtual meeting via Zoom

**1. ROLL CALL:**

**Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Steve Martinot, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

**Commissioners Absent:** Mary Kay Lacey (excused absence).

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, and Paola Boylan.

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

**3. PUBLIC COMMENT PERIOD:** 1

**4. PLANNING STAFF REPORT:**

- None

**Information Items:**

- None

**Communications:**

- None

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

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

**5. CHAIR REPORT:**

- None

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- None

## 7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wrenn/Beach) to approve the Planning Commission Meeting Minutes from September 30, 2020 with amendments to lines 60 and 68.

Ayes: Beach, Kapla, Krpata, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: Martinot. Absent: Lacey. (8-0-0-1)

## FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:

- None

## AGENDA ITEMS

### 9. Discussion: ***Business Support Zoning Amendment Referrals – Amusement Device Arcades and Arts District Overlay***

Staff shared research and findings associated with the two businesses support referrals described above with the Planning Commission. After staff's presentation, the Commission asked staff to propose amendments based on the recommendations discussed.

**Public Comments: 0**

**Members in the public in attendance: 2**

**Public Speakers: 1 speakers**

**Length of the meeting: 1 hours and 13 minutes**



Lori Droste  
Councilmember, District 8

CONSENT CALENDAR

June 25, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Droste, Mayor Arreguin, Councilmember Harrison, and Councilmember Wengraf

Item Description: Zoning Ordinance Modification for Elmwood Commercial District

RECOMMENDATION

Refer to the Planning Commission to amend Chapter 23E.44, C-E Elmwood Commercial District Provisions to allow for amusement device arcades with a Tier 2 Administrative Use Permit (for spaces >3,000 Sq. Ft.) and a Zoning Certificate (for spaces < 3,000 Sq. Ft.). Proposed ordinance language for changes to Table 23E.44.030 are attached.

FISCAL IMPACTS OF THE RECOMMENDATION

Potential tax revenue from newly permitted commercial uses.

CURRENT SITUATION AND ITS EFFECTS

This zoning modification is a Strategic Plan Priority Project, advancing our goal to foster a dynamic, sustainable, and locally-based economy. Currently, amusement device arcades” are prohibited uses in the Elmwood Commercial District.

BACKGROUND

Under current City codes, no amusement device arcades are permitted in the Elmwood Commercial Corridor. As the nature of retail and commercial uses changes and adapts to present day consumer habits and environments, so too should City code. Given recent commercial vacancies in the Elmwood Commercial District, now is an opportune time to re-examine commercial uses.

Recently, an established, local, family-owned business has expressed interest in opening a ‘vintage’ inspired arcade in the Elmwood. Upon review of our zoning code, the interested party saw that such use is currently prohibited. The proposed changes would allow for inventive businesses such as this one to open. The proposed changes take the size of the business storefront into consideration - arcades operating under 3,000 square feet would be allowed a

zoning certificate. Occupants of larger spaces (over 3,000 square feet) would need a Tier 2 Administrative Use Permit, which allows for public notice and feedback.

*This ordinance change would only apply to the Elmwood Commercial District. C-1 and CDMU commercial districts, per Table 23E.36.030 and Table 23E.68.030 require a UP (PH) for an amusement device arcade (unless they are within 600 ft. of a primary or secondary school, in which case they are prohibited). For all other Commercial Districts, the use is, and will remain, prohibited.*

ENVIRONMENTAL SUSTAINABILITY

RATIONALE FOR RECOMMENDATION

ALTERNATIVE ACTIONS CONSIDERED

CONTACT PERSON

Councilmember Lori Droste 510-981-7180

## Chapter 23E.44

### C-E Elmwood Commercial District Provisions

Sections:

<a href="#">23E.44.010</a>	Applicability of Regulations
<a href="#">23E.44.020</a>	Purposes
<a href="#">23E.44.030</a>	Uses Permitted
<a href="#">23E.44.040</a>	Special Provisions -- Numerical Limitations
<a href="#">23E.44.050</a>	Construction of New Floor Area, Conversions of Existing Buildings -- Requirements for Use Permits
<a href="#">23E.44.060</a>	Use Limitations*
<a href="#">23E.44.070</a>	Development Standards
<a href="#">23E.44.080</a>	Parking -- Number of Spaces
<a href="#">23E.44.090</a>	Findings

#### **23E.44.010 Applicability of Regulations**

The regulations in this chapter shall apply in all C-E Districts. In addition, general provisions in Sub-title [23C](#) shall apply. (Ord. 6478-NS § 4 (part), 1999)

#### **23E.44.020 Purposes**

The purposes of the Elmwood Commercial (C-E) Districts are to:

- A. Implement the Master Plan's designation for a community commercial district in this area.
- B. To maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
  1. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
  2. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
  3. Limiting the space occupied by businesses that generate high traffic and/or parking demands;

- 4. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
- 5. Permitting other uses which serve this objective.

C. To ensure that new buildings, alterations and additions to existing buildings harmonize with their surroundings. (Ord. 6478-NS § 4 (part), 1999)

**23E.44.030 Uses Permitted**

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

<b>Table 23E.44.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Retail Sales</b>		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	ZC*	
Over 3,000 s.f.	Prohibited	



Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as 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 property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal/Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage).
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Video Tape/Disk Rental Stores	AUP	
Offices		

Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	Prohibited	Including Holistic Health and Mental Health Practitioners
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	AUP	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service	UP(PH)	Service of alcoholic beverages allowed only as incidental to food service in Food Service Establishments
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Amusement Device Arcades <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	<del>Prohibited</del> <u>ZC</u> <u>AUP - tier</u> <u>2</u>	

Commercial Recreation Center		Outdoor use requires UP(PH)
Under 3,000 s.f.	AUP	
Over 3,000 s.f.	UP(PH)	
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments, including Nightclubs	Prohibited	
Food Service Establishments	AUP	Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	AUP	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
<b>Automobile and Other Vehicle Oriented Uses</b>		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	

Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building  Not abutting R-District  When abutting R-District	AUP  UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	UP(PH)	
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Sub-title F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	

Outdoor Cafe Seating		
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter <a href="#">23E.20</a>	ZC	
Requiring a UP under Chapter <a href="#">23E.20</a>	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section <a href="#">23E.44.070.E</a>
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	Treated as Food Service Establishment and subject to numerical limitations in Table <a href="#">23E.44.040</a> . Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store.
Live Entertainment		
Unamplified	ZC	
Amplified	Prohibited	
Manufacturing Uses	UP(PH)	

Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
<b>Uses Permitted in Residential Districts</b>		
Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Accessory Uses and Structures	Per R-3 District	See Table <a href="#">23D.36.030</a>
Accessory Buildings and Structures with Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section <a href="#">23E.44.070.F</a>
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section <a href="#">23E.44.070.F</a>

Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements under Section <a href="#">23E.44.080</a>
Nursing Homes	UP(PH)	Subject to parking requirements under Section <a href="#">23E.44.080</a>
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)	
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	

Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter  Up to 25 beds  More than 25 beds	ZC  UP(PH)	See Chapter <a href="#">23C.10</a> .
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		



Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section <a href="#">23C.17.100</a>
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section <a href="#">23C.17.100</a>
Urban Agriculture		<a href="#">23C.26</a>
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	*Change of Use of floor area over 2,000 sq. ft. shall require an AUP.	

B. Any Use not listed that is compatible with the purposes of the C-E District shall be permitted subject to securing an Administrative Use Permit. Any Use that is not compatible with the purposes of the C-E District shall be prohibited.

C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table [23E.44.030](#). (Ord. 7635-NS § 7, 2019; Ord. 7620-NS § 13, 2018; Ord. 7599-NS § 22, 2018; Ord. 7513-NS § 1, 2016; Ord. 7425-NS § 8, 2015; Ord. 7354-NS § 4, 2014; Ord. 7322-NS § 7, 2013; Ord. 7204-NS § 5, 2011; Ord. 7191-NS § 5, 2011; Ord. 7155-NS § 11, 2010; Ord. 7129-NS § 11, 2010; Ord. 6671-NS § 7, 2002; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6478-NS § 4 (part), 1999)

**23E.44.040 Special Provisions -- Numerical Limitations**

A. Uses subject to numerical limitations as set forth in Table [23E.44.040](#) shall also be subject to the requirements of Section [23E.44.030](#). No such limitation may be exceeded unless the Board issues an Administrative Use Permit and makes the findings under Section [23E.44.090.C](#).

Table 23E.44.040			
Numerical Limitations			
Use	Number Limit	Size (sq. ft.)	Type of Permit
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500	Zoning Certificate
Bookstores, Periodical Stands	No limit	2,000	Zoning Certificate
Food Service Establishments:	25		
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000	Zoning Certificate

(Ord. 7635-NS § 8, 2019; Ord. 7513-NS § 2, 2016; Ord. 7191-NS § 6, 2011; Ord. 6478-NS § 4 (part), 1999)

**23E.44.050 Construction of New Floor Area, Conversions of Existing Buildings --**

**Requirements for Use Permits**

A. No new gross floor area shall be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings.

B. Existing buildings used for commercial activities shall not be converted, unless an Administrative Use Permit is obtained. (Ord. 6478-NS § 4 (part), 1999)

**23E.44.060 Use Limitations\***

A. No Commercial Use shall operate except between the hours of 7:00 a.m. and 11:00 p.m., unless a Use Permit is obtained and is in accordance with Section [23E.16.010](#).

B. Any Use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading, in Table [23E.44.030](#), except as below:

1. Any food service use shall be subject to the limitations in Table [23E.44.040](#) and shall not be considered as an Incidental Use for this District except when an accessory use to a Food Product Store.

C. Any activity or Use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table [23E.44.030](#).

D. Adult-oriented Businesses, Amusement Device Arcades, and Non-Chartered Financial Institutions are not permitted in this District. Alcoholic Beverage Sales or Service Uses and Live/Work Uses shall be subject to the requirements of Chapters [23E.16](#) and [23E.20](#), in addition to the requirements of this District and below:

1. On-premises service or consumption of alcoholic beverages shall be permitted only as incidental consumption with meals in food service establishments. (Ord. 7513-NS § 3, 2016; Ord. 7425-NS § 9, 2015; Ord. 7191-NS § 7, 2011; Ord. 6478-NS § 4 (part), 1999)

\*Specific text which previously amended this section on September 26, 2006 was repealed November 2006 as stated in the sunset provision (§ 22) of Ordinance 6,948-N.S.

**23E.44.070 Development Standards**

A. The FAR shall not exceed eight-tenths (.8) for an Interior or Through Lot and the FAR shall not exceed one for a Corner Lot.

B. The height for a Main Building shall not exceed the following limits and shall satisfy the following requirements:

Use Type	Height (ft.)	Stories (number)
All	28	2*

\*Except that basement level devoted exclusively to parking shall not be counted as a story

C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:

1. Subject to obtaining a revocable encroachment permit from the City Council, bay windows and balconies 11 feet or more above the sidewalk grade may extend three feet into a street right-of-way, provided, that, not more than 60% of the length of a building elevation shall extend beyond the property line.

D. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section [23E.04.050](#) and [23E.04.060](#) shall apply, for additional yard and building feature requirements, respectively and as below:

1. No food service establishment shall have any openings other than fixed windows and required fire exits within 50 feet of a residential zone. In addition, no food service establishments shall have any live entertainment other than unamplified background music.

E. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the off-street parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements; provided, however, that the Board in its discretion may issue a Use Permit to modify the off-street parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section [23E.44.090.B](#).

F. Exclusive Residential Uses shall be subject to the building site area, yard, coverage and parking requirements of the R-3 District standards and the height limit set forth in Section [23D.36.070.B](#). Other requirements are set forth below:

1. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet with no dimension less than six feet;

2. No Residential Use shall be located on the ground floor within 20 feet of a property line along College or Ashby Avenue. (Ord. 6478-NS § 4 (part), 1999)

### **23E.44.080 Parking -- Number of Spaces**

A. All parking shall be provided in accordance with the requirements of this section and Chapter [23E.28](#), except as set forth in this section.

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. This standard shall not apply to spaces less than 6,000 square feet, where no parking standard exists.

C. Construction which results in the creation of 6,000 or more square feet of commercial gross floor space shall be required to provide Off-street Parking Spaces at the minimum ratio of two spaces per 1,000 square feet of gross floor area of commercial space and in accordance with the requirements of Chapter [23E.28](#).

D. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter [23E.32](#). (Ord. 6856-NS § 13 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

### **23E.44.090 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 do all of the following:

1. Encourage and maintain the present street frontage and pedestrian orientation of the District;
2. Be compatible in design and character with the commercial District and the adjacent residential neighborhoods;
3. Be compatible with the purposes set forth in Section [23E.44.020](#) and the existing character of the District.

In addition, a finding also shall be made that such action and its effects will not:

4. Interfere with the continuity of retail or compatible service facilities at the ground level;
5. Interrupt a continuous wall of building facades;
6. Generate traffic and parking demand beyond the capacity of the commercial District or significantly increase impacts on adjacent residential neighborhoods;
7. Result in domination of this District by one type of use;
8. Generate objectionable odors nor excessive levels of noise.

C. In order for a Use Permit under Section [23E.44.040](#).A, for an exception to exceed a numerical limitation for a use, to be granted the following finding must be made: The exception shall result in the positive enhancement

of the purposes of the District, as evidenced by neighborhood resident and merchant support and marketing surveys or other information indicating probable substantial patronage by surrounding residents. (Ord. 6478-NS § 4 (part), 1999)

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

**Zoning Ordinance Amendments modifying the definition of  
Amusement Device Arcades and modifying permit  
requirements for Amusement Device Arcades in the  
Commercial Zoning District and as an incidental use to  
maintain consistency throughout the BMC.**

The Department of Planning and Development is proposing to amend the Zoning Ordinance to regulate Amusement Device Arcades as Commercial Recreation Centers in the Commercial Zoning District, as well as modify regulations for Amusement Device Arcades when incidental to a permitted use for consistency throughout the Berkeley Municipal Code.

The hearing will be held on, October 11, 2022 at 6:00 p.m. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **September 29, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Robert Rivera, Senior Planner, Department of Planning and Development at [rrivera@CityofBerkeley.info](mailto:rrivera@CityofBerkeley.info).

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto: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. 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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** September 30, 2022 – The Berkeley Voice  
*Per California Government Code Sections 65856(a) and 65090.*



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 September 29, 2022.

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Mark Numainville, City Clerk