

# Item #16



## Zoning Amendments to Support Berkeley Businesses

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Berkeley City Council Meeting


February 27, 2024

# Summary of Ordinance Amendment & Development


2019-2023



  
**2019**  
October 2019:  
Zoning  
Amendments  
Phase II, Council  
Referral

  
**2020**  
June 2020:  
Planning  
Commission (PC)  
discussion on  
Phase II of Zoning  
Amendments

  
**2022**  
November 2022:  
Arcades & Sign  
regulations  
adopted by City  
Council

  
**2023**  
June 7, 2023: PC  
discussion on remaining  
referral items,  
subcommittee  
established  
  
June 28, 2023: PC  
Subcommittee mtg #1  
  
August 23, 2023: PC  
Subcommittee mtg #2  
  
October 4, 2023: PC  
Public Hearing –  
unanimous  
recommendation for  
remaining amendments  
for adoption by the City  
Council

 **Tonight:** Public Hearing at City Council, if adopted,  
ordinance effective Spring **2024**

# Summary of Outreach and Engagement

Spring 2023, Undertaken to prior to Planning Commission engagement Summer & Fall 2023



- 1:1 Meetings with Councilmembers & Mayor (weeks of 3/13/23 and 3/20/23 and 4/10/23)
- Meetings with BPD, Code Enforcement, and Health Department (4/10/23 & 5/1/23 and 6/1/23)
- Commercial District Leaders - Berkeley Business District Network (BBDN) (3/16/23)
- Public Community meeting hosted by the Berkeley Chamber focused on supporting Food Establishments, Nightlife Sector, Arts & Culture (4/18/23)
- Elmwood Business Association (4/21/23)
- Telegraph Business Improvement District (5/9/23)
- Berkeley Neighborhoods Council (5/13/23)
- Downtown Berkeley Association (5/25/23)

# Zoning Amendments to Support Small Businesses



**2019 City Council Referral  
Recommendations #1-7**

**&**

**2020-2023 Ordinance Development  
Recommendations #8-14 from the Planning Commission**

# Zoning Amendments to Support Small Businesses

**1. Permit Group Instruction and Health and Fitness Facilities with a Zoning Certificate (ZC) in commercial districts.** Currently most commercial districts require an Administrative Use Permit (AUP) for group instruction.

*Planning Commission recommends permitting larger (3,000+ sq ft) Group Instruction and Health & Fitness Facilities with an AUP in the C-N, C-E and C-SO districts and with a ZC in all other commercial districts.*



# Zoning Amendments to Support Small Businesses



**2. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards - Currently a Use Permit with a Public Hearing UP(PH) is required.**

*An AUP provides:*

- *Public notice*
- *Ability to appeal*
- *Staff may apply reasonable conditions of approval*

*BMC Section 23E.16.040 Alcoholic Beverage Sales - Special Use Standards section also proposed to be updated including objective findings for 'public convenience and necessity' for staff when evaluating a proposed permit.*



# Zoning Amendments to Support Small Businesses



**3. Permit stand-alone Beer and Wine Sales and Service (such as Tap Rooms and Wine Bars) with an Administrative Use Permit (AUP) subject to performance standards – Currently a Use Permit with a Public Hearing UP(PH) is required.**

*Planning Commission recommends permitting beer and wine sales and service (tap rooms & wine bars) with an AUP.*

**4. Update the Special Use Standards in BMC Section 23E.16.040 for Alcoholic Beverage Sales.**



*Wine So Cru, University Ave, Berkeley*

# Zoning Amendments to Support Small Businesses



**5. Modify hours of operation in commercial districts** – Currently, the permitted hours of operation vary by hours and days and may be different in adjacent commercial districts.

*The existing regulations have different times during the weekdays that allow for business operations; which does not account for holidays, and other unique cultural and civic events that may occur during a weekday.*

*Planning commission recommends expanding the hours of operation in select commercial districts.*



*Cornerstone Craft Beer & Live Music, Downtown Berkeley*



# Zoning Amendments to Support Small Businesses



## 5. Allowed Hours of Operation & Permit Required to Extend Hours - Proposed

District	Allowed Hours of Operation
C-C, C-U, C-NS, C-AC, C-W Nodes	6:00 a.m. - 2:00 a.m.
C-N, C-E, C-SA, C-SO, MU-R, C-W outside nodes	6:00 a.m. - 12:00 midnight
C-T, C-DMU	24 hours per day 7 days a week

Existing limits regarding hours and regulation of alcoholic service, and noise thresholds remain as is (in place).

An AUP would be required to extend hours beyond the time limits except in C-T and C-DMU, where 24 hour operations are permitted.

# Zoning Amendments to Support Small Businesses



**6. Remove 'change of use' permit requirements in commercial districts – *An AUP is currently required to obtain approval for a change of use.***

*Planning Commission recommends removing the AUP requirement for a change of use.*

*Applicants are still required to obtain the appropriate permit required in the zoning district.*



Commercial space with "For Lease" signs and an AUP application pending

# Zoning Amendments to Support Small Businesses



**7. Consider the appropriate levels of discretion for Automatic Teller Machines (ATMs) in commercial districts – Currently the BMC requires a UP(PH) for an ATM associated with a Financial Institution.**

*Planning Commission recommends no change to the existing regulations for ATMs based on the evolving nature of payment transactions and the volatility of the banking industry.*



# Zoning Amendments to Support Small Businesses



**8. Amend the level of discretion for Office, Business and Professional, Art/Craft Studios, and Pet Stores** – Currently Office, Business and Professional, and Art/Craft Studios require an AUP in some commercial districts and a ZC in others. Pet Stores currently require a UP(PH) in all but one commercial district.

*Planning Commission recommends a ZC for Art/Craft Studios in all commercial districts.*

*AUP for Pet Stores in commercial districts.*

*ZC for Office, Business and Professional in select commercial districts.*



# Zoning Amendments to Support Small Businesses

**9. Amend the level of discretion for Live Entertainment – Currently Live Entertainment requires an AUP in some commercial districts and a UP(PH) in other districts.**

*Planning Commission recommends a ZC for unamplified Live Entertainment and an AUP if amplified.*



*Live entertainment at the Cheese Board Collective, North Shattuck*


# Zoning Amendments to Support Small Businesses



**10. Amend the level of discretion for seated food service for distilled alcohol beverage service in the C-T, C-SO, and C-NS districts – Currently in these districts food service is required to accompany distilled alcohol beverage service.**

*Planning Commission recommends removing this requirement and regulating this use consistent with other commercial districts.*



 Reviewed November 28, 2007  
Great music. Went here for new years. The food was mediocre  
Great music. Went here for new years. The food was mediocre

Helpful?

This review is the subjective opinion of an individual contributor and not of Tripadvisor LLC. Tripadvisor performs checks on reviews.

# Zoning Amendments to Support Small Businesses



**11. Amend the level of discretion for Food Service Establishments and remove the restriction on renting restaurant space to a third party – Currently the BMC requires a ZC or an AUP based on size in most commercial districts.**

*Planning Commission recommends permitting food establishments 3,000 sf or less with a ZC. Larger will require an AUP.*

*3<sup>rd</sup> party rentals will be permitted in food establishments.*



*Gather Kitchen-Bar-Events, Downtown Berkeley*

# Zoning Amendments to Support Small Businesses



**12. Permit Food Service Establishments outdoors in select M districts -** Currently the BMC permits Food Service Establishments in the M, MM, M-UR and MU-LI districts with an AUP or an UP(PH) based on district and square footage.

*Planning Commission recommends allowing outdoor food service (still requiring an AUP) for smaller, incidental food service in select M districts and no longer limiting food or beverage to immediate consumption in the MM district.*

*A UP(PH) is still required for larger, primary food service in the MU-LI and MU-R districts.*



*Standard Fare Kitchen & Pantry, West Berkeley*



# Zoning Amendments to Support Small Businesses



**13. Remove the quota on Food Service Establishments in the C-E district –** Currently the C-E (Commercial-Elmwood) district is the only district in the City that restricts the number of Food Service Establishments to 25 (total).

*Planning Commission recommends removing this restriction.*



*In the Wood GastroPub, Elmwood District*

# Zoning Amendments to Support Small Businesses

**14. Amend the restriction of Drug Paraphernalia Stores in the C-T district –** Currently the BMC does not permit Drug Paraphernalia Stores or sales in the C-T (Commercial-Telegraph) district.

*Planning Commission recommends removing this restriction in the C-T district.*



# Zoning Amendments to Support Small Businesses



## Planning Staff

- Requirements for Existing Businesses
- Additional Technical Edits
- Staff Recommendation



*Sway Event Space, San Pablo Ave, courtesy of Visit Berkeley*

# Existing Businesses & New Regulations



**An existing business may be subject to more restrictive regulations than those proposed.**

- Example: a business in the C-U is currently approved to operate under existing hours of operation which end at **midnight**.
- However, the proposed ordinance allows businesses to operate until **2 AM**.
- Currently, a permit modification (BMC 23.404.070) is needed to change operating hours. A permit modification requires a **public hearing**.
- The proposed ordinance allows this change with an **AUP**.

**Modifying existing approvals with an AUP included for:**

- Hours of Operation (BMC 23.302.020)
- General Requirements for Alcohol Beverage Sales and Service (BMC 23.301.020)
- Alcoholic Beverage Service When Incidental to Food Service (BMC 23.302.030)

# Technical Edits



## 1. South Area Commercial (C-SA) District revisions

- Removal of language referring to parcels that are now Adeline Corridor Commercial (C-AC);
- Assignment of maximum height provisions to all C-SA parcels.

## 2. Family Day Care

- Removal of ZC requirement, per SB 234.

## 3. Restaurant Uses

- Removal of obsolete restaurant types (Carry Out Food Stores, Quick Service Restaurants).

## 4. Use Category Title Corrections

## 5. Overall Reduction in Tables and Text

# Staff Recommendation



- 1. Conduct a public hearing.**
- 2. Approve a first reading of the proposed zoning changes for Berkeley Businesses.**