



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, June 7, 2023

5:30 PM

North Berkeley Senior Center

1901 Hearst Avenue, Berkeley

See “**MEETING PROCEDURES**” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

### PRELIMINARY MATTERS

- 1. Roll Call:** **Merker, Blaine**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff, Chair**, appointed by Councilmember Taplin, District 2  
**Moore III, John E. “Chip”**, appointed by Councilmember Bartlett, District 3  
**Oatfield, Christina**, appointed by Councilmember Harrison, District 4  
**Mikiten, Elisa**, appointed by Councilmember Hahn, District 5  
**Marthinsen, Emily**, appointed by Councilmember Wengraf, District 6  
**Twu, Alfred**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali, Vice Chair**, appointed by Mayor Arreguín
- 2. Land Acknowledgement:** The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

- 3. Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 4. Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
- 5. Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: July 5, 2023.**
- 6. Chairperson’s Report:** Report by Planning Commission Chair.
- 7. Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 8. Approval of Minutes:** Approval of Draft Minutes from the meeting on May 3, 2023.
- 9. Future Agenda Items and Other Planning-Related Events:** None.

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 10. Action:** **Planning Commission 2023-2024 Work Plan Subcommittee Selection**  
**Recommendation:** Establish the Work Plan Subcommittee and appoint three Planning Commissioners by a vote.  
**Written Materials:** N/A.  
**Presentation:** N/A.
- 11. Action:** **Public Hearing: State Law Technical Edits Revised**  
**Recommendation:** Review the revised proposed zoning ordinance amendments to update the BMC in accordance with state laws related to special needs housing, employment housing, family day care home and parking as well as additional non-substantive edits. Take public comment, discuss draft ordinance amendments, and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A.
- 12. Discussion:** **Waterfront Specific Plan**  
**Recommendation:** Receive a presentation on the status of the Waterfront Specific Plan (WSP), take public comment, and provide feedback to staff. The WSP, if adopted, would guide future civic decisions related to nature, recreation, and development at the Berkeley Waterfront.

**Written Materials:** N/A.  
**Presentation:** N/A.

- 13. Discussion:** **Zoning Amendments to Support Businesses**  
**Recommendation:** Receive a presentation on proposed zoning amendments to support Berkeley businesses, take public comment, provide feedback and direction to staff, and convene a Subcommittee to provide detailed review of the proposed amendments for Planning Commission consideration.
- Written Materials:** Attached.  
**Presentation:** N/A.

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:**

- May 10, 2023 – North Berkeley BART Open House - Community Meeting #2, <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/ashby-and-north-berkeley>
- May 18, 2023 – Southside Zoning Modification Project presented at the Design Review Committee (continued to June 15, 2023)
  - Agenda: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/May\\_2023\\_Linked.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/May_2023_Linked.pdf)
  - Minutes: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2023-05-18\\_DRC\\_Draft%20Summary.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2023-05-18_DRC_Draft%20Summary.pdf)
- Kala Art Institute’s Print Public Municipal Artist in Residence Program, <http://www.kala.org/residencies/print-public-residency-program/>

**Communications:** General.

**Late Communications:** (Received after the packet deadline):

**Late Communications:** (Received and distributed at the meeting):

**ADJOURNMENT**

**Meeting Procedures**

**Public Testimony Guidelines:**

Speakers are customarily allotted up to two minutes each and may not cede their time to another speaker. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather

than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

***Consent Calendar Guidelines:***

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

***Procedures for Correspondence to the Commissioners:***

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than 20 pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the day just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning of, the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

***Communications are Public Records:*** Communications to Berkeley boards, commissions, or committees are public records 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 a City board, commission, or committee, 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 Secretary of the relevant board, commission, or committee. 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 Secretary to the relevant board, commission, or committee for further information.

***Written material*** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3<sup>rd</sup> Floor**, during regular business hours.

***Note: If you object to a project or to any City action*** or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal

challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

***Meeting Access:*** This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three business days before the meeting date.

*Please refrain from wearing scented products to public meetings.*



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2                   **May 3, 2023**

3   The meeting was called to order at 5:33 p.m.

4   **Location:** North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, CA 94709

5   **1. ROLL CALL:**

6       **Commissioners Present:** Blaine Merker, Jeff Vincent, Christina Oatfield, Elisa Mikiten,  
7       Savlan Hauser, Barnali Ghosh, and Alfred Twu.

8       **Commissioner Absent:** Emily Marthinsen & Chip Moore (Excused Absences).

9       **Staff Present:** Secretary Grace Wu, Clerk Zoe Covello, Claudia Garcia, Robert Rivera,  
10       Brian Garvey, and Justin Horner.

11   **2. LAND ACKNOWLEDGEMENT.**

12       The City of Berkeley recognizes that the community we live in was built on the territory of  
13       xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-  
14       chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the  
15       sovereign Verona Band of Alameda County. This land was and continues to be of great  
16       importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin  
17       our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the  
18       documented 5,000-year history of a vibrant community at the West Berkeley Shellmound,  
19       and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's  
20       residents have and continue to benefit from the use and occupation of this unceded stolen  
21       land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating  
22       the City of Berkeley, it is not only vital that we recognize the history of this land, but also  
23       recognize that the Ohlone people are present members of Berkeley and other East Bay  
24       communities today. The City of Berkeley will continue to build relationships with the Lisjan  
25       Tribe and to create meaningful actions that uphold the intention of this land  
26       acknowledgement.

27   **3. ORDER OF AGENDA:** No changes.

28   **4. PUBLIC COMMENT PERIOD:** 0.

29   **5. PLANNING STAFF REPORT:**

- 30       - May 10<sup>th</sup>, 6-8pm, North Berkeley Senior Center – North Berkeley BART Open House –  
31       opportunity to provide input on the development  
32  
33

- 34 - June 6<sup>th</sup> – City Council public hearing and first reading of the Bird Safe Building item
- 35 - Upcoming Planning Commission Meeting agendas (tentative):
  - 36 ○ June
    - 37 ▪ Discussion: Phase 2 Zoning Amendments to Support Berkeley Business
    - 38 ▪ Discussion: Update on the Waterfront Specific Plan
    - 39 ▪ Action: Elect a 2023-24 Planning Commission Workplan Subcommittee
      - 40 • Housing Element to drive work plan
  - 41 ○ August – Recess
  - 42 ○ September
    - 43 ▪ Southside Zoning Amendment
    - 44 ▪ Gilman Draft Environmental Impact Report and Zoning Amendment

45 **Information Items:** None.

46 **Communications:**

- 47 • General.

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

- 49 • Supplemental Packet One.

50 **6. CHAIR REPORT:**

- 51 • None.

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

- 54 • None.

55 **8. APPROVAL OF MINUTES:**

56  
57  
58 Motion/Second/Carried (Mikiten/Merker) to approve the Planning Commission Meeting  
59 Minutes from April 19, 2023.

60  
61 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
62 Absent: Marthinsen and Moore. (7-0-0-2)

63  
64 **9. OTHER PLANNING RELATED EVENTS:**

- 65 • Upcoming Parks Recreation and Waterfront Commission Meeting scheduled for  
66 Wednesday, May 10, at 7:00pm

67 **AGENDA ITEMS**

68 **10. Public Hearing: Tentative Tract Map #8639**

69 Assistant Planner Brian Garvey presented on Tentative Tract Map #8639, the Commissioners  
70 asked clarifying questions, and recommended that City Council accept staff's proposal.

71 Motion/Second/Carried (Vincent/Twu) to close the public hearing at 5:57pm.

72  
73 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
74 Absent: Marthinsen and Moore. (7-0-0-2)  
75

76 Motion/Second/Carried (Mikiten/Ghosh) to approve the Tentative Tract Map as recommended  
77 by staff at 5:57pm.

78  
79 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
80 Absent: Marthinsen and Moore. (7-0-0-2)  
81

82 **Public Comments: 0**

### 83 **11. Public Hearing: Accessory Dwelling Unit Amendments**

84 Assistant Planner Zoe Covello presented on draft zoning ordinance amendments to Title 23  
85 relating to ADUs to conform to current state law and HCD guidance. Public comment was taken,  
86 and the commissioners discussed the draft ordinance amendments and made a  
87 recommendation to City Council.

88 Motion/Second/Carried (Vincent/Twu) to close the public hearing at 6:30pm.

89  
90 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
91 Absent: Marthinsen and Moore. (7-0-0-2)  
92

93 Motion/Second/Carried (Vincent/Mikiten) to accept staff's recommendation with a technical  
94 edit to permit bay windows and balconies on all ADUs, with projections measured by setback  
95 distance from the rear property line. The Commissioners also recommended:

- 96  
97 1. Revising the Neighbor Noticing requirement so that public notices for ADUs clearly indicate  
98 the non-discretionary nature of the permit, link to the City's ADU webpage and clearly  
99 identify additional permit and construction information, and only need to go to tenants on  
100 the subject property, and  
101 2. Removing the AUP requirement for residential additions for attached ADUs to reach  
102 maximum allowable height.

103  
104 at 7:34pm.

105  
106 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
107 Absent: Marthinsen and Moore. (7-0-0-2)  
108



109 **Public Comments: 2**

110 **12. Public Hearing: State Law Technical Edits**

111 Senior Planner Robert Rivera presented on draft zoning ordinance amendments to update the  
112 Berkeley Municipal Code in accordance with state laws related to special needs housing,  
113 employment housing, family day care home, and AB 2097 parking, as well as additional non-  
114 substantive edits. The commissioners discussed the draft ordinance amendments and  
115 recommended that City Council accept staff's proposal.

116 Motion/Second/Carried (Vincent/Ghosh) to close the public hearing at 7:44pm.

117  
118 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
119 Absent: Marthinsen and Moore. (7-0-0-2)

121 Motion/Second/Carried (Ghosh/Oatfield) to approve the amendments as recommended by  
122 staff at 7:45pm.

123  
124 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
125 Absent: Marthinsen and Moore. (7-0-0-2)

126  
127 **Public Comments: 0**

128 **13. Action: Poll for Special Meeting on July 19, 2023**

129 This item was removed from the agenda as the special meeting was no longer required.

130 **Public Comments: 0**

131 Motion/Second/Carried (Vincent/Merker) to adjourn the meeting at 7:47pm.

132  
133 Ayes: Merker, Vincent, Oatfield, Mikiten, Hauser, Ghosh, Twu. Noes: None. Abstain: None.  
134 Absent: Marthinsen and Moore. (7-0-0-2)

135  
136 **Members in the public in attendance: 2**

137 **Public Speakers: 2**

138 **Length of the meeting: 2 hr 14 minutes**



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: June 7, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

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### RECOMMENDATION

Following the May 3, 2023 Planning Commission meeting, the Planning Commission is asked to conduct a public hearing to: 1) discuss additional state law and non-substantive technical edits to the Berkeley Municipal Code (BMC) zoning amendments required to align with state laws related to special needs housing, employment housing, family day care, and parking; and 2) make a recommendation to City Council to approve the proposed revised Zoning Ordinance amendments (**Attachment 1**), which contains the recommended amendments from the May 3, 2023 Planning Commission meeting as well as additional clarifications and technical edits.

The amendments to the BMC are listed below. Bolded items are added or clarified sections subsequent to the May 3, 2023 Planning Commission meeting.

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- **23.206.050 Protected Industrial Uses**
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)

- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- **23.304.030 Setbacks**
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- **23.324.050 Nonconforming Structures and Buildings**
- **23.502.020 Glossary**

### **SUMMARY**

In response to recent changes in housing-related state laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with state law requirements for special needs and employment housing, family day care homes, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

### **BACKGROUND**

On May 3, 2023, staff presented to the Planning Commission proposed Zoning Ordinance amendments required for compliance with recently approved state laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance. Staff is returning to clarify and include additional technical edits identified since the May 3, 2023 meeting.

### **DISCUSSION**

The Planning Commission Staff Report for May 3, 2023 includes a summary of state law requirements and also non-substantive technical edits identified by staff, community members, and the Zoning Officer. Each section provides a brief summary and references a summary table that includes the Zoning Ordinance section and the proposed changes (**Attachment 2 and 3**). The sections below provide a summary of the additional proposed clarifications and technical edits.

#### Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by state law, a residential use and prohibits the requirement of a business license. Staff identified an additional reference to family day care home within the "Protected Non-Industrial Uses" table in the MU-LI and MU-R districts. Proposed amendments remove reference to family day care home as a protected use because family day care home is considered a residential use under state law.

#### Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

*“A Housing First, low barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”*

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Local jurisdictions shall not prohibit additional flexibility in low barrier shelters, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones where multifamily and mixed-use development is permitted, including nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

At the May 3, 2023 meeting, staff originally proposed a definition of “low barrier navigation center” that replicated the state law definition. Upon further research of the definition used in adjacent jurisdictions, staff propose an amended definition that uses common language and provides an explanation of technical terms used in the state law definition. The clarified definition is intended to be easier to understand and administer.

#### Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with state law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. In addition to the technical edits recommended by Planning Commission at the May 3, 2023 meeting, staff propose adding the following technical edits:

- **Allowed Building Projections.** If all criteria are met<sup>1</sup>, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent to other similar features such as stairs, decks, and porches, and clarifies development requirements for accessibility features. Following the May 3, 2023 meeting, staff identified an error that would limit preferred designs to the interior side or rear setback, instead of all setback areas. The proposed amendment corrects this error.

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<sup>1</sup> <https://berkeley.municipal.codes/BMC/23.406.090>

- **Protected Industrial Uses.** The MU-R Zoning District in the old Zoning Ordinance did not include protected industrial uses but nevertheless incorrectly included findings for change of use from industrial uses (manufacturing, warehousing and wholesale).<sup>2</sup> Staff propose to remove the protected industrial uses from the MU-R Zoning District which include change of use findings for protected industrial uses.
- **Nonconforming Uses, Structures and Buildings.** The old Zoning Ordinance allowed for both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed to be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles which inadvertently resulted in additional permitting requirements for *conforming* projects. The proposed changes correct this error by adding “conforming” back into the section’s headers and titles.

## ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that the proposed zoning ordinance amendments related to housing are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to family day care home, parking, and technical edits do not constitute a project under the requirements of the California Environmental Quality Act (CEQA) because they have no potential for resulting in a physical change to the environment. If the ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

## NEXT STEPS

Upon receiving further public comment and Planning Commission recommendation, staff will forward the proposed revised draft Zoning Ordinance to City Council for consideration and adoption.

## ATTACHMENTS

1. Draft Ordinance – Zoning Ordinance Amendments
2. Planning Commission Staff Report, May 3, 2023
3. Reference Matrix – Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits
4. Public Hearing Notice

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<sup>2</sup> The original error in the old Zoning Ordinance likely occurred as a result of mimicking the findings and formatting for MM and MU-LI Districts.

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS (SUPPLEMENTAL USE REGULATIONS) (BMC 23.302.070), GENERAL DEVELOPMENT STANDARDS CHAPTER (BMC 23.304), EMERGENCY SHELTERS CHAPTER (BMC 23.308), PARKING AND LOADING CHAPTER (BMC 23.322), NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.342), AND GLOSSARY (BMC 23.502.020) FOR CONSISTENCY WITH STATE LAW RELATED TO SPECIAL NEEDS AND EMPLOYMENT HOUSING, FAMILY DAY CARE HOME, PARKING, AND ASSOCIATED TECHNICAL EDITS

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

Section 1. That the following lines under the category “Public and Quasi-Public Uses” in Table 23.202-1 (Allowed Land Uses in Residential Districts) within Berkeley Municipal Code 23.202.020 are amended, added, or removed: “Emergency Shelter” is hereby amended, the lines “Emergency Shelter, more than 15 beds”; “Low Barrier Navigation Center” and “Supportive Housing” are hereby added, and the lines “Family Day Care Home, Large” and “Family Day Care Home, Small” are hereby removed to read as follows:

Table 23.202-1: Allowed Land Uses in Residential Districts

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply **--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU*		
<b>Public and Quasi-Public Uses</b>													
Emergency Shelter, <u>15 beds or fewer</u>	NP	NP	NP	NP	NP	NP	See 23.	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<a href="#">23.308 - Emergency Shelters</a>	

							<del>308</del> <u>ZC</u>					
<u>Emergency Shelter, more than 15 beds</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	
<del>Family Day Care Home, Large</del>	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	
<del>Family Day Care Home, Small</del>	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	
<u>Low Barrier Navigation Center</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	
<u>Supportive Housing</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>23.302.070.1</u> <u>- Supportive Housing</u>

Section 2. The Berkeley Municipal Code Table 23.202-14 is amended to read as follows:

TABLE 23.202-14. R-4 LOT AND HEIGHT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.	
Floor Area Ratio, Maximum	No maximum	
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	35 ft. and 3 stories [2]	
Residential Additions	16 ft. [3]	
Notes:		
1. One additional resident is allowed for remaining lot area between 200 and 350 square feet.		

- 2. Maximum 65 ft. and six stories allowed with Use Permit.
- 3. Height greater than 164 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft. and six stories allowed with a Use Permit.

**Section 3.** That the following lines under the category “Public and Quasi-Public Uses” in Table 23.204-1 (Allowed Uses in the Commercial Districts) within Berkeley Municipal Code 23.204.020 (Allowed Land Uses) are hereby amended or added: “Emergency Shelter” is amended; and the lines “Emergency Shelter, 26 to 60 beds”; “Emergency Shelter, more than 60 beds”; “Low Barrier Navigation Center”; and “Supportive Housing” are hereby added to read as follows:

TABLE 23.204-1. ALLOWED USES IN THE COMMERCIAL DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-N	C-U	C-E	C-NS	C-NA	C-SA	C-T	C-SO	C-DMU	C-AC	
<b>Public and Quasi-Public Uses</b>												
<a href="#">Emergency Shelter, -25 beds or fewer</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">23.308 - Emergency Shelters</a>
<a href="#">Emergency Shelter, 26 to 60 beds</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">ZC</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	
<a href="#">Emergency Shelter, more than 60 beds</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	<a href="#">UP (P H)</a>	
<a href="#">Low Barrier Navigation Center</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	<a href="#">ZC</a>	



<a href="#">Supportive Housing</a>	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">ZC</a> * -	<a href="#">23.302.0</a> <a href="#">70.1-</a> <a href="#">Supportiv</a> <a href="#">e</a> <a href="#">Housing</a>
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**Section 4.** That Berkeley Municipal Code Table 23.204-12 is amended to read as follows:

TABLE 23.204-12. C-U SETBACK STANDARDS

LOT LINE & PROJECT CONDITIONS	REQUIRED SETBACK
<b>Front</b>	
Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No <u>minimum</u> .
<b>Rear</b>	
Lots on south side of University Avenue abutting <del>a lot in</del> residential district-	<u>Minimum of 10 ft. or 10% of lot depth, whichever is greater, and an Average of 20 ft. [2] [3]</u>
<del>All other lots</del> <u>Lots on south side of University Avenue not abutting a residential district</u>	<u>No minimum 10 ft. or 10% of lot depth, whichever is greater</u>
Lots on north side of University Avenue	See 23.204.060(-D)(-5)- C-U University Commercial District (Solar Access)
Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by 23.304.030.C.2- Setbacks (Lots Adjacent to Residential Districts) [34]

**Section 5.** That the following lines under the category “Public and Quasi-Public Uses” in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) named Low Barrier Navigation Center; and Supportive Housing are hereby added to read as follows:

TABLE 23.206-1. ALLOWED USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use	<b>MANUFACTURING DISTRICTS</b>				<b>Use-Specific Standards</b> Applies to uses with
	<b>M</b>	<b>MM</b>	<b>MU-LI</b>	<b>MU-R</b>	

Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply					an asterisk following the permit requirement (e.g., ZC*)
<b>Public and Quasi-Public Uses</b>					
<a href="#">Low Barrier Navigation Center</a>	<a href="#">NP</a>	<a href="#">NP</a>	<a href="#">NP</a>	<a href="#">ZC</a>	
<a href="#">Supportive Housing</a>	<a href="#">NP</a>	<a href="#">NP</a>	<a href="#">NP</a>	<a href="#">ZC*</a>	<a href="#">23.302.070.1 – Supportive Housing</a>

Notes:

1. A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- ~~2. Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.~~
- ~~3.2.~~ See 23.304.030(C)(-2)(-b) ([Modifications in Commercial Districts](#)) for allowed reductions.
- ~~4.3.~~ If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.

Section 6. That the Notes in Table 23.206-1 (Allowed Uses in Manufacturing Districts), within Berkeley Municipal Code 23.206.020 (Allowed Land Uses and Permit Requirements) are amended to read as follow:

Notes:

- [1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.
- [2] Not permitted 20,000 sq. ft. or more.
- [3] Requires a Use Permit if 5,000 sq. ft. or more
- [4] Requires a Use Permit for uses more than 20,000 sq. ft.
- ~~[5] Not permitted over 2,000 sq. ft.~~
- ~~[5]6~~ Not permitted over 3,000 sq. ft.
- ~~[6]7~~ Requires a Use Permit for uses more than 40,000 sq. ft.
- ~~[7]8~~ Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.

[89] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.

[940] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.

[104] Allowed with Zoning Certificate if under 1,000 sq. ft. Requires Use Permit if over 20,000 sq. ft.

[112] Requires an AUP for uses more than 20,000 sq. ft.

[123] Not permitted 1,500 sq. ft. or more.

[134] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.

[145] Requires Use Permit for markets over 5,000 sq. ft.

Section 7. That Berkeley Municipal Code Section 23.206.040(C)(1) is amended to read as follows:

1. As used in this section, “child-serving use” means a school, child care center, ~~family day care~~ or park/recreational facility used by children. Family day care homes are exempt from these regulations and not included in the definition of “child-serving use.”

Section 8. That Berkeley Municipal Code 23.206.050(A)(3)(a) is amended to read as follows:

- a) To approve a ~~Use P~~ermit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.

Section 9. That Berkeley Municipal Code 23.206.050(B) is hereby removed and Berkeley Municipal Code 23.206.050(C) is amended to read as follows:

~~**B. Protected Industrial Uses in the MU-R District.**~~

- ~~1. Protected Industrial Uses Defined. Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally established uses.~~

- ~~2. **Permit Required.** Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.~~
- ~~3. **Permit Findings.** To approve a Use Permit, when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:
 
  - ~~a) The change of use 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; and~~
  - ~~b) Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.~~~~
- ~~4. **Exempt from Permit Requirement.** A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.~~

**B. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.**

1. **Protected Non-Industrial Uses Defined.** A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
  - (a) Was legally established as of July 6, 1989; and
  - (b) Exists as a single stand-alone use or is combined with residential use in a live/work unit.

TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES

CATEGORY	PROTECTED USES
Category 1	Art/craft studio
Category 2	1) Art galleries, ancillary to art/craft studios and when located in the same building 2) Child care facility <del>3) Family day care home</del> 3) Fine arts performance, instruction and rehearsal studios (dance, music, theater) 4) Theaters, stage performance, but excluding motion picture theaters

2. **Permit Required for Change of Use.**
  - (a) Table 23.2069 shows permits required to change a protected non-industrial use.

TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE

EXISTING PROTECTED USE GROSS FLOOR AREA	NEW USE		
	A PROTECTED USE IN THE SAME CATEGORY	A PROTECTED USE IN A DIFFERENT CATEGORY	A NON-PROTECTED USE THAT OCCUPIES ALL OF THE NON-RESIDENTIAL FLOOR AREA IN THE BUILDING
Less than 5,000 sq. ft.	ZC	AUP	AUP
5,000 sq. ft. or more	AUP	UP(PH)	UP(PH)

3. *Owner-Occupied Exemption.* A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.

4. *Findings.*

(a) To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.

(b) When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

Section 10. That Berkeley Municipal Code 23.206.080(B)(6) is amended to read as follows:

6. *General Retail.* Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supplies stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.

Section 11. That Berkeley Municipal Code 23.206.090(B)(3) is amended to read as follows:

3. *Community Care Facility.* Community care facilities are allowed in the MU-R district ~~only~~ as a change of use. New construction is ~~not~~ permitted with a Use Permit.

Section 12. That Berkeley Municipal Code 23.302.070(I) through (K) are hereby added and re-lettered to read as follows:

I. Supportive Housing.

1. Permits Required. Supportive housing shall be allowed by right in zones where multifamily and mixed uses are permitted, if the proposed housing development satisfies requirements pursuant to Government Code Section 65651(a).

J. Smoke Shops. In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J.K. Warehouse Storage for Retail Use.

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
  - a) An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
  - b) Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

Section 13. That Berkeley Municipal Table 23.304-2 is amended to read as follows:

TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS

BUILDING FEATURE	MAXIMUM PROJECTION INTO REQUIRED SETBACK (MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE LOT LINE)			
	FRONT	REAR	INTERIOR SIDE	STREET SIDE
Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Eaves, Cornices, Canopies, Awnings and Bay Windows [1]	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]	6 ft.	6 ft.	1.5 ft.	2.5 ft.
Balconies and fire escapes [1]	6 ft.	6 ft.	1.5 ft.	2.5 ft.

Notes:

1. Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.
2. Uncovered decks, porches, landings and stairs less than 30 inches in height (not including railings) are not subject to minimum setback requirements.

Section 14. That Berkeley Municipal Code 23.304.030(B)(4) is amended to read as follows:

4. *Accessibility for Persons with Disabilities.* Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities that are less than 30 inches above grade (not including railings) are not subject to minimum setback requirements. Any accessibility feature with a height above grade of 30 inches or more (not including railings) may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
  - a) One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot, and.
  - b) The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space unless there is no other feasible location for the accessibility feature.

Section 15. That Berkeley Municipal Code Section 23.308.020(C) is hereby removed as follows:

~~C. **Required Permits.** Table 23.308-1 shows permits required for emergency shelters.~~

~~TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS~~

<del>DISTRICTS</del>	<del>PERMIT REQUIRED [1]</del>
<del><b>Residential Districts</b></del>	
<del>R-1, R-1A, ES-R, R-2, R-2A, R-3</del>	<del>Not Permitted</del>
<del>R-4, R-5, R-S, R-SMU, and R-BMU</del>	
<del>15 beds or fewer [1]</del>	<del>ZC</del>
<del>More than 15 beds</del>	<del>UP(PH)</del>
<del><b>Commercial Districts</b></del>	
<del>C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC</del>	

25 beds or fewer	ZC
More than 25 beds	UP(PH)
C-DMU	
60 beds or fewer	ZC
More than 60 beds	UP(PH)
<b>Manufacturing Districts</b>	
M, MM, MU-LI, MU-R	Not Permitted
Notes: [1] See also permit requirements based on floor area of use in Table 23.308-2.	

Section 16. That Berkeley Municipal Code 23.308.030(A) is amended to read as follows:

- A. *All Districts.* The following standards apply to emergency shelters in all districts.
1. No individual or household ~~may~~shall be denied emergency shelter because of an inability to pay.
  2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
  3. When abutting a Residential District, all waiting and intake areas ~~areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation,~~ shall be located indoors.
    - ~~4. The following e~~Emergency shelter facilities are required :to have
    - ~~5.4.~~ Aan area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
      - ~~a. Shower and restroom facilities~~
      - ~~b. Daytime services.~~
      - ~~c.a.~~ Meal servicesOn-site cafeteria.
      - ~~d. Communal kitchen.~~
      - ~~e. Laundry equipment for clients.~~
      - ~~f.b.~~ Child care center.
      - ~~g. Vehicle and/or bicycle parking.~~
    - ~~7.6.~~ Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.



- ~~8.7.~~ On-site management and security shall be provided at all times the facility is in operation and on-site management shall be provided at least one hour before and after facility operation hours.
- ~~9.~~ ~~The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:~~
- ~~a.~~ Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
  - ~~b.~~ Eligibility criteria, enforcement rules, and procedures for disruptive clients.
  - ~~c.~~ Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
  - ~~d.~~ Bed bug prevention.
  - ~~e.~~ Refuse collection.
  - ~~f.~~ Security procedures.
  - ~~g.~~ Separation of sleeping areas and restrooms by gender and for families.
  - ~~h.~~ Consistency with the Alameda County Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
- ~~10.8.~~ The shelter provider shall conduct a community meeting after giving notice to all owners and occupants ~~on record with the Alameda County Assessor~~ within a 100-foot radius of the proposed shelter location. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

Section 17. That Berkeley Municipal Code 23.308.030(C) is amended to read as follows:

C. *Findings.* To approve a Use Permit for an emergency shelter, ~~under Section 23.308.020.C (Required Permits) or 23.308.030.B.2 (Standards in Residential Districts),~~ the Zoning Adjustments Board (ZAB) must find that a:

A larger shelter facility will help meet the City's goals pertaining to emergency housing of the homeless.;

~~1. The circumstances of the subject property make the larger facility appropriate; and~~  
~~2. Design features will minimize impacts on the surrounding area.~~

Section 18. That the section named; Non-Residential Uses; in Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-1. REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : See 23.322.030.A.2
Community Care Facility	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : <del>One per two non-resident employees</del> <u>None required</u>
Food Service Establishment	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 300 sq. ft.
Hospital	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per each 4 beds plus 1 per each 3 employees
Library	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 300 sq. ft.
Non-Medical Offices	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

Section 19. That the category named Non-Residential Uses in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	<del>1 per 2 non-resident employees</del> <a href="#">None required</a>
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	<u>MU-LI District:</u> 1.5 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	<u>MU-R District:</u> 1.0 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	<u>MU-LI District:</u> 1 per 1,000 sq. ft. of work area where workers/clients are permitted <u>MU-R District:</u> if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Section 20. That Berkeley Municipal Code 23.322.020(D) is hereby added to read as follows:

[D. Location Exemption.](#) Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 21. That Berkeley Municipal Code 23.324 title is hereby amended to read as follows:

**Chapter 23.324**

**CONFORMING AND NONCONFORMING USES, STRUCTURES, ~~AND~~ BUILDINGS, AND LOTS**

Section 22. That Berkeley Municipal Code 23.324.010 is hereby amended to read as follows:

**23.324.010 Chapter Purpose.**

This chapter establishes regulations for conforming and nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

Section 23. That Berkeley Municipal Code 23.324.050 section title is hereby amended to read as follows:

**23.324.050 Conforming and Nonconforming Structures and Buildings**

Section 24. That Berkeley Municipal Code 23.324.050(F)(4)(a) is hereby amended to read as follows:

(a) A conforming or nonconforming residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.

Section 25. That Berkeley Municipal Code 23.502.020(C)(17) is amended to read as follows:

17. *Community Care Facility.* A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes

community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), ~~supportive housing (California Government Code Section 65582),~~ and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, [supportive housing](#), and transitional housing.

Section 26. That Berkeley Municipal Code 23.502.020(E)(3) is amended to read as follows:

3. *Emergency Shelter.* Temporary lodging for homeless persons with minimal supportive services [that may include 24-hour services and that](#) may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e).

Section 27. That Berkeley Municipal Code 23.502.020(F)(3) is amended to read as follows:

3. *Family Day Care Home.* An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care home ~~is considered an activity allowed as part of residential use in any zoning district in which residential uses are either permitted or conditionally permitted. must be incidental to must be operated in the dwelling unit or accessory building where the family day care operator resides.~~

~~(a) Small Family Day Care Home. A family day care home for eight or fewer children, including children who live at the home.~~

~~(b) Large Family Day Care Home. A family day care home for nine to fourteen children, including children who live at the home.~~

Section 28. That Berkeley Municipal Code 23.502.020(H)(10) is amended to read as follows:

10. *Household.* One or more persons, whether or not related by blood, marriage or adoption, [with common access to and use of all living, kitchen and eating areas within a single dwelling unit.](#) ~~sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities,~~

~~as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.~~

Section 29. That Berkeley Municipal Code 23.502.020(L)(21) is hereby added as follows:

21. *Low Barrier Navigation Center.* A temporary, low-barrier-to-entry shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, healthy services, shelter, and housing. Low barrier includes best practices to reduce barriers to entry, such as allowing partners, pets, storage of personal items, and privacy pursuant to California Government Code Section 65660 and includes services to connect people to permanent housing through a service plan and services staffing and a coordinated entry system pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations.

Section 30. That Berkeley Municipal Code Section 23.502.020(S)(16) is amended to read as follows:

16. *Single-Family Dwelling.* A building designed for and occupied exclusively by one household, and may provide accommodations for six or fewer employees as “employee housing” pursuant to Healthy and Safety Code Section 17021.5

Section 31. That Berkeley Municipal Code Section 23.502.020(S)(32) is amended to read as follows:

32. *Supportive Housing.* As defined in Health and Safety Code 50675.14(b)(2), housing with no limit on length of stay, (2): Housing with no limit on length of stay, Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in Health and Safety Code 50675.14(b)(3) in subdivision (d) of Section 53260 of the CA Health and Safety Code, with no limit on length of stay, that is and linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

Section 32. 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: May 3, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

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### RECOMMENDATION

The Planning Commission is asked to conduct a public hearing to: 1) discuss zoning amendments required to align with State laws related to special needs housing, employment housing, family day care home, and parking, as well as additional non-substantive edits to the sections of the Berkeley Municipal Code (BMC) listed below; and 2) make a recommendation to City Council to approve the proposed Zoning Ordinance amendments (Attachment 1).

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking

- 23.502.020 Glossary

## **SUMMARY**

In response to recent changes in housing-related State laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with State law requirements for special needs and employment housing, family day care home, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

## **BACKGROUND**

On January 18, 2023, The Berkeley City Council adopted an updated Housing Element for the period 2023-2031 (Resolution No. 70,669-N.S). On February 28, 2023, the State Department of Housing and Community Development (HCD) found the adopted Housing Element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code) and stated the City must continue timely and effective implementation of all programs. Program 31 – Zoning Code Amendments: Special Needs Housing - requires the City of Berkeley to review and adopt new zoning provisions by December 2023 to align land use standards with State law requirements for special needs housing. In addition, staff is also bringing forward related parking, family day care home, and employee housing amendments required for compliance with other recently approved State laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance (**Attachment 1**).

## **DISCUSSION**

The following is a summary of State law requirements related to special needs and employment housing, family day care home, parking, and also non-substantive technical edits identified by the Zoning Officer. Each section provides a brief summary and references a summary table that identifies the Zoning Ordinance section and the proposed changes (**Attachment 2**).

### Emergency Shelter (AB 139 & AB 2339)

AB 139 (2019) limits the development standards that local jurisdictions can impose on emergency shelters. Jurisdictions are limited to regulating the following objective standards:

- Maximum number of beds,
- Sufficient parking to accommodate all staff, provided that this standard does not require more parking for shelters than other residential or commercial uses in the same zone,
- Size and location of onsite client waiting and intake areas,
- Proximity to other shelters, provided that shelters are not required to be more than 300 feet apart,
- Length of stay,



- Lighting,
- Provision of onsite management,
- Security during operating hours.

AB 2339 (2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services which may include, health care, transportation, retail, employment, and social services.

To address AB 139, staff propose removing standards that local jurisdictions cannot regulate and included Emergency Shelter in applicable Allowed Use Tables. No substantive changes for permit types or thresholds for number of beds are included. Staff also updated the definition of Emergency Shelter to clarify that 24-hour services may be included. Staff has not made any changes in response to AB 2339 because sites identified for emergency shelters are permitted and located in all areas where residential uses are permitted.

#### Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

*“A Housing First, low barrier, service enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”*

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Low barrier shelters may also provide additional flexibility, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

The Berkeley Zoning Ordinance does not currently define or address low barrier navigation centers. Consistent with AB 101, staff propose adding the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff propose a definition of “low barrier navigation center” that is consistent with State law.

#### Supportive Housing (AB 2162)

AB 2162 (2018) requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria pursuant to [Government Code Section 65651\(a\)](#)<sup>1</sup>. Additionally, parking is not required for supportive housing

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65651](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65651).

projects located within one half-mile of a public transit stop as required by [Government Code Section 65654](#).

Currently, the Zoning Ordinance includes supportive housing within the definition of Community Care Facility, as well as a separate stand-alone definition for supportive housing. Proposed amendments would remove supportive housing from the community care facility definition, amend Residential, Commercial and Manufacturing zoning use tables to be consistent with State law criteria, and amend the definition to be consistent with the California Health and Safety Code.

Projects consistent with the criteria under Government Code Section 65651(a) would be permitted by-right, with a Zoning Certificate, in all zones where multifamily and mixed-use residential development is permitted. If a project does not qualify under the criteria, the project would not be considered supportive housing and would fall under another definition for housing with permit requirements consistent with the respective allowed use table.

#### Employee Housing Act

The Employee Housing Act (Health and Safety Code 17021.5) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation. Thus, the proposed changes amend the definition of Single-Family Dwelling to include employee housing.

#### Household definition

The 2023-2031 Housing Element – Program 31, identified the City’s definition of household as a necessary update. The City’s definition of Household must be updated to remove constraints on housing for persons with disabilities by updating the definition to align with current City practices. The City does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household.

#### Lanterman Developmental Disabilities Service Act (Lanterman Act)

In accordance with State law, State licensed residential facilities for six or fewer persons are a permitted use in all zones where residential use is permitted, with no minimum parking requirement for non-resident employees. The following State statutes require that small (serving six or fewer persons) licensed group homes be treated like other residential uses and include: facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1), pediatric day health facilities (Health & Safety Code 1267.9;1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).

Currently, the Zoning Ordinance permits conversion of an existing dwelling into a residential care facility, regardless of the number of residents, with a Zoning Certificate. New construction of a residential care facility would require a Use Permit, which is the same review procedure applied to other residential development. Proposed amendments would make that consistent within the MU-R District. Parking for non-resident employees is the other non-compliant development standard and the proposed amendment would remove parking requirements for nonresident employees to be consistent with State law.

#### Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by State law, a residential use and prohibits the requirement of a business license.

Currently, the Zoning Ordinance requires a Zoning Certificate for all family day care homes and the City does not require a business license. Proposed amendments edit the definition of family day care home to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amended the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes.

#### Minimum Parking Requirements (AB 2097)

AB 2097 (2022) prohibits the City from imposing a minimum off-street automobile parking requirement on most development projects in any zoning district located within one half-mile of a transit stop as defined in Section 21155 of Public Resource Code<sup>2</sup>, which defines a high-quality transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

The proposed amendments include a location exemption from the minimum off-street parking requirements and codify language consistent with State law to preserve the City’s ability to impose minimum parking requirements in limited instances, such as parking requirements for hotels and event centers.

#### Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with State law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

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<sup>2</sup>[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. The following technical edits are proposed:

- **R-4 Lot and Height Standards.** The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet and text was omitted from the old Zoning Ordinance. Staff propose to correct the error.
- **C-U Setback Standards.** Text was omitted from the old Zoning Ordinance for rear setbacks for lots on south side of University Avenue abutting lot in residential district and staff proposes to include the text to correct the error. Staff also proposes to correct an error with rear setbacks for all other lots. A minimum setback is now required when the old Zoning Ordinance did not require a rear setback. Note two is also proposed to be removed because the old Zoning Ordinance gave it as an example, not as an additional requirement.
- **MU-LI Building Materials and Garden Supplies.** The old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 square feet with an AUP and 20,000 square feet or larger with a Use Permit. The new Zoning Ordinance limits building materials and garden supplies stores to 2,000 square feet. Proposed text corrects this error and permits uses and sizes consistent with the old Zoning Ordinance.
- **Allowed Building Projections.** If all criteria are met<sup>3</sup>, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent across sections and clarify development requirements for accessibility features.
- **Protected Industrial Uses.** The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts – which must provide replacement space. Findings were only applied when a use permit was required. Staff has clarified the applicability to only apply when the change of use requires a use permit. Similarly, for the MU-R Zoning District, the old Zoning Ordinance did not require a use permit to change a protected industrial use for all changes from manufacturing, warehousing and wholesale. The new Zoning Ordinance requires a permit for all change of uses regardless of the permit requirements. The proposed changes correct this error.

## ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that:

- The proposed Zoning Ordinance amendments related to *special needs housing and employment housing* are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts.

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<sup>3</sup> <https://berkeley.municipal.codes/BMC/23.406.090>

- The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act, together with State CEQA guidelines collectively, “CEQA”) because they have no potential for resulting in a physical change to the environment.

In the event that this Ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

### **NEXT STEPS**

Upon receiving Planning Commission recommendation and public comment, Staff will forward a proposed draft Zoning Ordinance to City Council for consideration and adoption.

### **ATTACHMENTS**

1. Draft Ordinance – Zoning Ordinance Amendments
2. Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits - Reference Matrix
3. Public Hearing Notice

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

Table 1 Proposed Amendments to Address State Laws

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p><b>AB 139 (Emergency Shelters 2019)</b> limits the development standards that local jurisdictions can impose on emergency shelters.</p> <p><b>AB 2339 (Emergency Shelters 2022)</b> provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable</p>	<p>23.202.020 Allowed Land Use (Residential)                      23.204.040 Allowed Land Uses (Commercial)                      23.308.020(C) Applicability and Nonconformities (Emergency Shelters);                      23.308.030(A) Standards for Emergency Shelters;                      23.308.030(C) Findings (Emergency Shelters);                      23.502.020(E)(3) Defined Terms;</p>	<p>Staff removes standards that local jurisdictions cannot regulate pursuant to AB139 and included Emergency Shelter in applicable allowed use tables. No substantive changes for permit types or thresholds for number of beds are included.</p> <p>Staff also updates the definition of Emergency Shelter to clarify that 24-hour services are permitted</p> <p>No changes are proposed in response to AB 2339 because sites identified for emergency shelters are already permitted and located in all areas where residential uses are permitted.</p>
<p><b>AB 101 (Low Barrier Navigation Center)</b> defines “low barrier navigation centers” and requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.</p>	<p>23.202.020 Allowed Land Uses (Residential)                      23.204.020 Allowed Land Uses (Commercial)                      23.206.020 Allowed Land Uses (Manufacturing)                      23.502.020(L)(21) Defined Terms</p>	<p>AB 101 permits low barrier navigation centers by right in zones that permit multifamily uses. Consistent with AB 101, staff added the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff added a definition consistent with state law.</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p><b>AB 2162 (Supportive Housing)</b> requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria.</p>	<p>23.202.020 Allowed Land Uses (Residential)                      23.204.020 Allowed Land Uses (Commercial)                      23.206.020 Allowed Land Uses (Manufacturing)                      23.302.070(I) Use-Specific Regulation                      23.502.020(C)(17) Defined Terms                      23.502.020(S)(32) Defined Terms</p>	<p>Staffed amend Community Care Facility definition to exclude supportive housing; supportive housing is already defined separately. Staff amended the definition to be consistent with the California Health and Safety Code and amended the City-wide Use Specific Regulations to include criteria requirements under AB 2162.</p>
<p><b>Health and Safety Code HSC 17021.5 (Employee Housing Act)</b> requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation.</p>	<p>23.502.020(S)(16) Defined Terms</p>	<p>Staff update Single-Family Dwelling definition to include “employee housing” to align with the requirements from Health and Safety Code 17021.5</p>
<p><b>House Element (Household definition)</b> as part of Program-31 requires the City to update the definition of household to remove constraint on housing for persons with disabilities.</p>	<p>23.502.020(H) Defined Terms</p>	<p>Staff update the definition of household to be consistent with current practice. The city does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household.</p>
<p><b>Lanterman Developmental Disabilities Service Act (Residential Care)</b> requires local jurisdictions to allow licensed residential facilities for six or</p>	<p>23.206.090(B)(3) MU-R Mixed Use-Residential District (Community Care Facility)</p>	<p>Staff amend use specific standards to allow new development of community care facilities with a Use Permit, consistent with multifamily use, in the MU-R District.</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
fewer persons as a permitted use in all zones where residential use is permitted.		
<p><b>SB 234 (Supportive Child Care Family Home Expansion)</b> considers all family daycare homes for up to 14 children, that operate under the standards of state law, a by-right residential use and prohibits the requirement of a business license.</p>	<p>23.202.020 Allowed Land Uses (Residential)                  23.206.040(C)(1) Use-Specific Regulation                  23.206.050(C) Protected Non-Industrial Uses in the MU-LI and MU-R Districts.                  23.502.020(F)(3) Defined Terms</p>	<p>Staff amend the definition of “family day care home” to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amend the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes and removed “family day care home” as a protected industrial use in MU-R District, as it is inherently a permitted residential use.</p>
<p><b>AB 2097 (Minimum Parking Requirements)</b> prohibits the City from imposing a minimum off-street automobile parking requirement on most<sup>1</sup> development projects in any zoning district located within ½ mile of a major transit stop as defined in Section 21155 of Public Resource Code<sup>2</sup> which defines a major transit stop as a</p>	<p>23.322.020(D) Applicability</p>	<p>Consistent with state law, staff included a location exemption for all development projects within ½ mile of major transit stop.</p>

<sup>1</sup> “Project” does not include a project where any portion is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except where a portion of a housing development project is designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

<sup>2</sup> [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)



Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.		

Table 2 Proposed Technical Zoning Amendments

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<b>R-4 Lot and Height Standards</b>	23.202.110 E. (Development Standards) Table 23-202-14 R-4 Lot and Height Standards	Staff identified an error between the allowed building height and permit requirement in the R-4 Lot and Height Standards Table. The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet. Also, text describing stories permitted from the old Zoning Ordinance was omitted from the footnote. Staff propose to correct the error and include omitted text.
<b>C-U Setback Standards</b>	23.204.060 D. (Development Standards) Table 23.204-12: C-U Setback Standards	Text was omitted from the old Zoning Ordinance pertaining to minimum rear setbacks and staff propose to include the text to correct the error.

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<b>MU-LI Building Materials and Garden Supplies</b>	23.206.080(B)(6) (Land use Regulations) Notes for Table 23.206-1	Old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 sq. ft. with an AUP. New Zoning Ordinance limits building materials and garden supplies stores to 2,000 sq. ft. Proposed text corrects error and permit uses consistent with the old Zoning Ordinance.
<b>Allowed Building Projections</b>	23.304.030 (Setbacks)	<p>A Reasonable Accommodation (AUP) is required for all wheelchair ramps, if all criteria are met, while stairs, decks and porches are not subject to minimum setback requirements.</p> <p>Proposed amendments would make standards consistent for other similar features like porches, stairs and decks and clarifies development requirements for accessibility features.</p>
<b>Protected Industrial Uses</b>	23.206.050(A)(3)(a) Protected Industrial Uses in the MM and MU-LI Districts 23.206.050(B) Protected Industrial Uses in the MU-R District.	The old Zoning Ordinance allowed conversion of protected industrial uses up to 25% or 20,000 (whichever was less) with an AUP. The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts. Findings were only applied when a use permit was required. The new Zoning Ordinance removed this standard and requires findings for all permits and does not

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
 Technical Edits – Reference Matrix

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
		<p>permit conversions with an AUP. Staff has clarified the applicability to only apply when a change of use requires a use permit. In addition, Staff propose amendments to protected industrial uses in the MU-R district. The MU-R district in the old Zoning Ordinance did not describe protected industrial uses and incorrectly included findings for change of use between manufacturing, warehousing and wholesale to match formatting for MM and MU-LI Districts. Staff propose to remove the protected industrial uses from the MU-R Zoning District.</p>
<p><b>Conforming and Nonconforming Uses, Structures, and Buildings.</b></p>	<p>23.342 Nonconforming Uses, Structures and Buildings                  23.342.040 Nonconforming Structures and Buildings                  23.324.050(F)(4)(a) Damage and Reconstruction</p>	<p>The old Zoning Ordinance clarified that both conforming and nonconforming residential-only structures or buildings with four residential units or less that are involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate. The new Zoning Ordinance removed the term “conforming” from headers and titles, which resulted in additional permitting requirements for conforming projects that could have been rebuilt with a Zoning Certificate. The proposed changes correct this error through revised headers and titles</p>

Attachment 2: Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other  
Technical Edits – Reference Matrix



# PLANNING COMMISSION

## Notice of Public Hearing

**Wednesday, June 7, 2023**

### **Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law Relating to Special Needs Housing, Employment Housing, Family Day Care, Parking; and Non-Substantive Technical Edits**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, June 7, 2023 at 5:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, June 2, 2023.

#### **PROJECT DESCRIPTION**

The proposed amendments to the City's Zoning Ordinance (Title 23) respond to recent changes in state law related to housing, family day care, and parking, and the requirements of the City's 2023-2031 Housing Element to align the City's land use standards to state law requirements for special needs and employment housing, by December 2023. The proposed amendments also include non-substantive technical corrections to ensure consistency throughout the Zoning Ordinance. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- 23.324 Nonconforming Uses, Structures, and Buildings
- 23.502.020 Glossary

#### **ENVIRONMENTAL REVIEW STATUS**

Staff recommends that the Planning Commission make a recommendation to the City Council that the proposed zoning ordinance amendments related to housing are within the scope of the analysis of the

City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act (CEQA) because they have no potential for resulting in a physical change to the environment. If the ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

### **PUBLIC COMMENT & FURTHER INFORMATION**

All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello  
Planning Commission Clerk  
Email: [PlanningPC@cityofberkeley.info](mailto:PlanningPC@cityofberkeley.info)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Tuesday, May 30, 2023**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, June 5, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm one day before this public hearing**, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

### **COMMUNICATION ACCESS**

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

### **FURTHER INFORMATION**

Questions should be directed to Justin Horner at (510)-981-7476 or [JHorner@berkeleyca.gov](mailto:JHorner@berkeleyca.gov)  
Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.



**Planning and Development Department**  
Land Use Planning Division

STAFF REPORT

June 7, 2023

TO: Members of the Planning Commission

FROM: Kieron Slaughter, Chief Strategist, Economic Innovation, Office of  
Economic Development  
Justin Horner, Associate Planner, Planning and Development Department

SUBJECT: Zoning Amendments to Support Berkeley Businesses

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RECOMMENDATION

Staff recommend the Planning Commission receive a presentation on proposed zoning amendments to support Berkeley businesses, take public comment, provide feedback and direction to staff, and convene a Subcommittee to provide detailed review to staff to draft zoning ordinance amendments for a Public Hearing at Planning Commission with recommendation to the City Council.

SUMMARY

In response to City Council referrals, City staff from the Office of Economic Development (OED) and the Land Use Planning Division (LUP) are proposing zoning revisions targeted at, but not limited to, supporting small businesses in commercial, manufacturing, and Residential BART Mixed Use (R-BMU) and Residential Southside Mixed Use (R-SMU)<sup>1</sup>. Small businesses are defined as having 50 or fewer employees. This report includes seven responses to Council referrals concerning group instruction, alcohol sales and service, hours of operation, change of use, and ATMs. The report also includes seven related staff recommendations for amendments to the BMC that regulate business and professional offices, art and craft studios, pet stores, live entertainment, food service, and drug paraphernalia.

The seven referral actions include:

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<sup>1</sup> City of Berkeley GIS Portal Zoning Map:  
<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Planning%20and%20Building>

1. Permit **Group Class Instruction** with a Zoning Certificate (ZC) in the Neighborhood Commercial (C-N), Elmwood Commercial (C-E), North Shattuck Commercial (C-NS) and Solano Avenue Commercial (C-SO) zoning districts, and revise the definitions of a number of group-oriented activity uses;
2. Permit the sale of **Distilled Spirits incidental to food services** with an Administrative Use Permit (AUP) in Commercial zoning districts and the Mixed Use-Light Industrial (MU-LI) and Mixed Use-Residential (MU-R) zoning districts;
3. Permit **stand-alone Beer and Wine Sales and Service** (at stores and bars) with an AUP in all Commercial zoning districts;
4. Revise the Special Use Standards for **Alcoholic Beverage Sales**;
5. Extend allowed **hours of operation** in Commercial zoning districts;
6. Remove permit requirements to **change of use** in Commercial zoning districts; and
7. Make no changes related to **Automatic Teller Machines (ATMs)** in Commercial zoning districts.

OED staff also puts forward the following seven additional zoning ordinance revisions for Planning Commission consideration:

8. Permit **Office, Business and Professional uses, and Art/Craft Studios** with a ZC in commercial zoning districts, and permit **Pet Stores** with an AUP in commercial zoning districts;
9. Permit unamplified **Live Entertainment** with a ZC and amplified Live Entertainment with an AUP in commercial zoning districts and in the MU-LI and MU-R zoning districts;
10. Permit distilled **alcoholic beverage service without seated food service** in the Telegraph Avenue Commercial (C-T), C-NS and C-SO zoning districts;
11. Permit **Food Service Establishments** of 3,000 square feet or less with a ZC, and establishments with more than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts; and permit the rental of space in Food Service Establishments that include incidental alcohol sales to third parties;
12. Remove the **cap on the number of Food Service Establishments** in the C-E zoning district;
13. Permit incidental **Food Service Establishments** under 20,000 square feet in manufacturing districts to be **indoors and outdoors**, and remove the specification that food or beverage be limited to "immediate consumption" in the MM zoning district; and
14. Permit **drug paraphernalia sales** as an allowed use in the C-T zoning district.



## FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased business activity. In addition, the proposed amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

## CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over many decades to reflect Berkeley's changing values and the changing landscape of property development and land use. Its requirements are intended to guide the city's growth while providing opportunities for feedback from residents, business owners, and commercial district and neighborhood associations.

OED staff have observed that it is particularly difficult for small, independently-owned businesses to navigate the permit review process and the associated timelines and expense.

In order to better accommodate today's small, independent enterprises, OED staff recommend amendments to provide a simpler, less-expensive, and speedier process for businesses in their establishment or expansion phases. These changes further the City of Berkeley's Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily-accessible service and information to the community," while honoring the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

## BACKGROUND

In response to Council's *Small Business Support Package* of 2017 and the subsequent referral response, *Zoning Amendments to Support Small Businesses* of 2018, OED staff gathered input from small business owners regarding their experiences and challenges in Berkeley. The initial outreach conducted between 2017 and 2019 consisted of surveys and interviews with Berkeley's small businesses and three small business forums.<sup>2</sup>

On October 15, 2019, City Council referred to the Planning Commission a set of nine policy considerations “to streamline the zoning review process for new or expanding

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<sup>2</sup> OED's Small Business Forums included: 2017 (Gaumenkitzel, 2121 San Pablo Ave), 2018 (Raleigh's, 2438 Telegraph Ave) and 2019 (Kirin, 1767 Solano Ave).

small businesses,” to support Berkeley businesses and bolster Berkeley’s commercial districts (**Attachment 1**). Planning Commission discussed an initial referral response to this item in July 2020 (**Attachment 2**). Two of the nine items, related to the regulation of arcades and the review process for business signs, were adopted by the City Council in 2022.<sup>3</sup>

The first section of this report includes proposed zoning revisions for the remaining referral items, summarized in Table 1. One referral item related to ATMs (#7) is not proposed to be amended at this time.

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

Referral Action	Potential BMC Section(s)
<p>1. <b>Group Class Instruction.</b> Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. (Attachment 1, referral dated 10/15/2019)</p> <p>Revise definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”</p>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p> <p>23.502.20 Glossary (Defined Terms)</p>
<p>2. <b>Incidental Distilled Spirits.</b> Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts. (Attachment 1, referral dated 10/15/2019, and Attachment 3, referral dated 12/4/2018)</p>	<p>23.310.030. Alcoholic Beverage Service When Incidental to Food Service</p> <p>Table 23.310-1. Permits Required for Alcoholic Beverage Service</p>
<p>3. <b>Stand-Alone Beer and Wine.</b> Permit stand-alone Beer and Wine Sales and Service with an AUP, subject to performance standards, in all commercial zoning districts. (Attachment 1, dated 10/15/2019 and Attachment 3, referral dated 12/4/2018)</p>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p>

<sup>3</sup> *Referral Response: Amendments to the Zoning Ordinance to Clarify and Streamline the Permit Process for Amusement Device Arcades*, adopted by Berkeley City Council, Item 20, October 11, 2022 and *Referral Response: Amendments to the Sign Ordinance to Clarify Procedures and to Establish a Coordinated Sign Design Program, and Establish a New Fee for Coordinated Sign Design Programs*, adopted by Berkeley City Council, Item 11, November 29, 2022.

Referral Action	Potential BMC Section(s)
4. <b>Alcoholic Beverage Sales Standards.</b> Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C). (Attachment 1, referral dated 10/15/2019)	23.310.030. Alcoholic Beverage Service When Incidental to Food Service
5. <b>Hours of Operation.</b> Modify hours and days of operations in commercial districts. (Attachment 1, referral dated 10/15/2019).  Establish that an AUP, not a Permit Modification, is required to extend hours to match this change.	23.302.020(B). General Use Regulations—Hours of Operation  23.404.070 Permit Modifications
6. <b>Change of Use.</b> Remove permit requirements to change a use in commercial districts. (Attachment 1, referral dated 10/15/2019)	23.204.020. Allowed Land Uses (Commercial Districts)  Table 23.204-1. Allowed Uses in Commercial Districts  23.204.040. Use-Specific Permit Requirements
7. <b>ATMs.</b> Allow Automatic Teller Machines (ATMs) in commercial districts with a ZC. (Attachment 1, referral dated 10/15/2019)	No changes proposed.

BMC Section 23.402.020 (Review and Decision-Making Authority) summarizes the procedures when processing permit applications. The bullet points below explain the three levels of discretion applied to permitted uses in BMC 23.406 (Specific Permit Requirements).

- A **Zoning Certificate (ZC)** is a ministerial planning staff approval to confirm that a structure or land use complies with the Zoning Ordinance. A ZC is approved by staff who report to the Zoning Officer based on the objective criteria established in the zoning code and there is no opportunity to appeal.<sup>4</sup> A ZC entitles the applicant to obtain a business license and/or building permit to begin operation.

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<sup>4</sup> A Zoning Certificate (ZC) is typically issued in person at the permit service center or within two weeks if requested online. A ZC costs between \$230 and \$460, depending on ZC type.

- An **Administrative Use Permit (AUP)** is a discretionary permit approved by the Zoning Officer to ensure that a proposed project or use will not adversely impact neighboring properties or the general public. Written notice of the Zoning Officer's initial decision on an AUP is provided to the immediate neighbors and can be appealed to the Zoning Adjustments Board (ZAB), or, if the AUP is initially referred to the ZAB for a decision by the Zoning Officer, can be appealed to the City Council. Appeals to the ZAB and/or City Council are conducted as public hearings. The Zoning Officer, ZAB or City Council can add conditions of approval to AUPs.<sup>5</sup>
- A **Use Permit (UP)** is a discretionary permit approved by the ZAB, at a publicly-noticed public hearing to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public. This level of discretion is notated as *UP(PH)* or *Use Permit (Public Hearing)* in the BMC. The ZAB's initial approval of a UP can be appealed to the City Council. Appeals to the City Council are publicly-noticed public hearings. The ZAB or City Council can add conditions of approval to UPs.<sup>6</sup>

#### Additional Zoning Amendments to Assist Berkeley Businesses

In the course of conducting outreach for the proposed amendments listed in Table 1, OED staff received additional feedback outside of the scope of the initial referral actions. Between the initial referral in 2019 and present (Spring 2023), OED staff has continued to conduct research and outreach to assist local businesses. In addition to research, these efforts have included: consulting with business services staff at nonprofit organizations and other municipalities; meeting with small business owners, operators and business district staff in Berkeley; analyzing other municipalities' business services and policies; analyzing Berkeley-specific case studies and permit records; and conducting additional direct services, such as the Small Business Retention Program.<sup>7</sup>

As a result, OED staff propose seven additional related zoning amendments for consideration by the Planning Commission. OED staff have met with the Berkeley Police Department's Community Services Bureau as well as code enforcement staff

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<sup>5</sup> An AUP can take between 2 and 8 months to process, and typically costs between \$2,166 and \$6,398. For additional information, see <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/administrative-use-permit>.

<sup>6</sup> Use Permits can take between 6 and 24 months to process, and typically cost between \$4,282 and \$7,432. For additional information, see: <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/use-permit>.

<sup>7</sup> Project Equity, Small Business Retention Project, (2019-present), see: <https://project-equity.org/communities/small-business-closure-crisis/berkeley-california/>

from the Zoning, Neighborhood Services and Environmental Health Divisions to gather input and identify process and implementation improvements, particularly with respect to after-hours code enforcement.

The additional seven proposed amendments to support Berkeley’s small businesses are summarized below in Table 2.

**Table 2 Additional Zoning Amendment Proposals**

Additional Actions	Potential BMC Section(s)
<p>8. <b>Office, Business and Professional; Art/Craft Studio; Pet Stores.</b></p> <ul style="list-style-type: none"> <li>• Allow Office, Business and Professional uses with a ZC in the C-N, C-E, C-NS, C-T and C-SO zoning districts;</li> <li>• Allow Art/Craft Studios with a ZC in all commercial zoning districts; and</li> <li>• Permit Pet Stores with an AUP in the Corridor Commercial (C-C), University Commercial (C-U), C-N, C-E, C-NS, South Area Commercial (C-SA), C-T, C-SO, Downtown Mixed-Use (C-DMU) and Adeline Corridor Commercial (C-AC) zoning districts.</li> </ul>	<p>23.204.020. Allowed Land Uses (Commercial Districts)</p> <p>Table 23.204-1. Allowed Uses in Commercial Districts</p>
<p>9. <b>Live Entertainment.</b> Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, West Berkeley Commercial (C-W), C-E, MU-LI and MU-R zoning districts.</p>	<p>23.302.020(D) General Use Requirements—Live Entertainment—Permits Required</p>
<p>10. <b>Seated Food Service Requirement.</b> Allow distilled alcoholic beverage service to accompany seated food service in the C-T, C-NS, and the C-SO zoning districts.</p>	<p>23.310.030(B) Alcoholic Beverage Service When Incidental to Food Service—Use Limitations</p>
<p>11. <b>Food Service Establishments 3,000 sq. ft or less.</b> Allow Food Service Establishments 3,000 square feet or less with a ZC, and permit food establishments greater than 3,000 square feet with an AUP, in all commercial zoning districts and the R-SMU and R-BMU zoning districts, as long as alcohol services is not included.</p> <p>Remove the restriction on renting space in a Food Service Establishment that serves alcohol incidental to food service to a third party.</p>	<p>23.302.070(E). Use-Specific Regulations—Food Service Establishments</p> <p>23.310.030. Alcoholic Beverage Service When Incidental to Food Service</p>

Additional Actions	Potential BMC Section(s)
12. <b>Food Service Establishment Quota.</b> Remove the Numeric Limitation for Food Service Establishments in the C-E zoning district.	23.204.080 C-E Elmwood Commercial District
13. <b>Incidental Food Service Establishment Requirements.</b> Allow incidental Food Service Establishments under 20,000 square feet in manufacturing districts to be indoors and outdoors, and remove the specification that food or beverage be limited to “immediate consumption” in the MM zoning district.	23.302.070(E) Use-Specific Regulations—Food Service Establishments  Table 23.302.070--80 Permit Requirements for Food Service Establishments in Manufacturing Districts
14. <b>Drug Paraphernalia in C-T District.</b> Allow retail sales of drug paraphernalia in the C-T zoning district.	23.204.110(B)(3) C-T Telegraph Avenue Commercial District

**DISCUSSION**

The proposed Zoning amendments are intended to:

1. Reduce permit review thresholds for establishing permitted uses;
2. Increase consistency of permitted uses across neighborhood commercial zoning districts and across larger corridor zoning districts;
3. Maintain public noticing procedures, ability to condition approvals, and provide pathways to appeal a discretionary permit.

**Proposed Zoning Amendments in Response to Referred Actions**

Staff have identified the following recommended Zoning amendments in response to referrals by City Council.

1. *Group Class Instruction.*

*Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts.* The proposed zoning definition amendments are summarized in Table 3 below. Currently, most Commercial zoning districts require an AUP for group class instruction. Based on outreach by OED staff, the existing AUP process can be both expensive and cumbersome for applicants to establish these uses.

Recent business models focus on creating activity or experience-based enterprises for patrons alongside traditional retail sales (e.g., painting or art classes accompanying the sales of paint and art supplies, or pattern and fabric sales connected with sewing classes).

The proposed amendments would allow Group Class Instruction, Art Classes/Studios, Dance/ Martial Arts Studios, and Gym/Health Club/Fitness Studios with a ZC in all Commercial zoning districts, including the C-N, C-E, C-NS and C-SO zoning districts where they currently require an AUP, or, in the case of Gym/Health Club/Fitness Studios, where permits vary based on zoning district and business size. Group instruction uses that involve amplified sound would still be required to obtain the necessary permit (i.e., AUP) and follow the existing performance standards related to noise. The reduction in permit threshold would make it easier for business operators to offer activity-based and/or group instruction experiences in Berkeley.

*Revise Definitions Related to Group Class Instruction.* There are currently three definitions that share operational characteristics and permit requirements: “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”

**Table 3: Existing and Proposed Group Class Instruction & Related Definitions**

Existing Definition	Proposed Definition
<p><b>Dance / Exercise / Martial Arts / Music Studio.</b> An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.</p>	<p><b>Dance / Martial Arts Studio.</b> An establishment in which customers assemble for dancing, self-defense training, or other movement drills for learning, rehearsal or non-audience performances.</p>
<p><b>Group Class Instruction.</b> An establishment that offers specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.</p>	<p><b>Group Class Instruction.</b> An establishment that offers specialized programs in personal growth and development. Includes music and choral instruction, drama schools, art schools, tutoring centers, and instruction in other cultural and academic pursuits.</p>
<p><b>Gyms and Health Clubs.</b> An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.</p>	<p><b>Gym / Health Club / Fitness Studio.</b> An indoor facility where exercise equipment, group classes and other activities related to personal health and fitness are available to customers or members. Excludes parks/playgrounds.</p>

Exercise and aerobics are proposed to be removed from “Dance Studios” because they are captured in the definition of “Gym / Health Club / Fitness Studio.” “Music Studio” is proposed to be removed from the definition because the use is captured in the existing definition of “Media Production.” Music Instruction is proposed to be included under

“Group Class Instruction.”<sup>8</sup> Note that the definition and permit requirements for Commercial Recreation Center remain unchanged, which permit activities and uses that include (but aren’t limited to) indoor rock climbing, bowling alleys, bingo parlors, skating rinks, billiard or pool halls, miniature golf courses and axe throwing.

- **Combining Group Class Instruction and Related Definitions.** An alternative to refining the three definitions would be to combine all of them into a single Group Class Instruction/Gym/Fitness Studio definition. Many of the businesses that would be covered under only one the three definitions share traits that would make them similar from a land use impact perspective: regular visits by members or customers, the presence of exercise or activity-related equipment, and the offering of organized classes.

2. *Incidental Distilled Spirits.*

*Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts, and with a UP in the R-BMU zoning district.* Currently, an operator of a Food Service Establishment must obtain a Use Permit to serve Distilled Spirits that are incidental to food service, which is a process separate from, and in addition to, the State of California Division of Alcohol Beverage Control (ABC) review process. The proposed amendments would permit incidental sale and service of distilled alcoholic beverages in Berkeley with an AUP. The proposed changes are included in Table 4, below and would also include an amendment to BMC Section 23.310.030(C) – Incidental Beer and Wine Service Standards to condition Food Service Establishments applying to expand alcoholic beverage service.

**Table 4: Beer & Wine and Distilled Spirits Incidental to Food Service – Proposed Amendments**

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
All Commercial Zoning Districts, <del>except C-AG and the R-BMU District</del>	ZC	<del>UP(PH)</del> <u>AUP</u>

<sup>8</sup> Note: This would be separate from a home occupation use in a residential district that includes small group lessons as an incidental use, such as private piano lessons.



District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
<u>R-BMU</u>	<u>ZC</u>	<u>UP(PH)</u>
MU-LI, MU-R	<u>UP(PH) AUP</u>	<u>UP(PH) AUP</u>

3. *Stand-Alone Beer and Wine.*

*Permit stand-alone Beer and Wine Sales and Service with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts.* Currently, stand-alone Beer and Wine Sales and Service uses (e.g., tap rooms, wine bars, and tasting rooms) are permitted in the C-C, C-U, C-SA, C-T, C-DMU, C-W, and C-AC zoning districts with a Use Permit, which is a process separate from, and in addition to, the State of California’s Alcoholic Beverage Control (ABC) review process. The proposed amendments would permit stand-alone sale and service of beer and wine with an AUP.

4. *Alcoholic Beverage Sales and Service Standards.*

*Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C) to align with the proposed Zoning amendments.* The proposed amendments include revisions to the Special Use Standards for Alcoholic Beverage Sales in BMC 23.319.030(C).<sup>9</sup> These changes include revised findings for public convenience and necessity that provide objective standards for staff to reference when evaluating permit applications and/or preparing findings for a proposed permit involving alcoholic beverage sales or service.

*Revise Alcoholic Beverage Sales General Requirements, Excluding Incidental Beer and Wine Service.* BMC Section 23.310.020, Alcoholic Beverage General Requirements Excluding Beer and Wine Service (i.e. distilled spirits), applies to applications that are starting or increasing alcoholic beverage sales (except for beer and wine service that is incidental to food service). The proposed revisions would implement the following changes:

- Currently, a Use Permit is required to begin or increase alcoholic beverage sales or service. The proposed revisions would permit service of distilled spirits incidental to food service with an AUP.

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<sup>9</sup> Special Use Standards for Alcoholic Beverage Sales first established in 1999 and revised in 2008, 2009, 2010, 2011, 2014, and 2019.

- The proposed revisions would amend the findings of undue concentration of alcoholic beverage sales and service uses to be consistent with State of California definitions found in Business and Professions Code Section 23958.4<sup>10</sup> and in ABC regulations.
- The proposed revisions would amend the Findings of Convenience and Necessity to include economic development benefits to the surrounding area, and to require that only one, not all, of the listed findings are required for permit issuance.
- The proposed revisions would remove existing requirements that the Berkeley Police Department (BPD) review proposed establishments to determine whether they would be expected to add crime to the area or whether an applicant's previous alcohol-related violations at another location would indicate a high likelihood of further violations. These findings are difficult to make as there are no objective standards to evaluate the potential of a business to negatively impact public safety in the future, for BPD to forecast crime at a particular location, or to attribute any predicted increase in crime to the operation of a business that does not yet exist. BPD will instead be notified of all approved alcohol-related permits along with their conditions of approval.

*Revise Alcoholic Beverage Sales General Requirements, Alcoholic Beverage Service When Incidental to Food Service.* BMC Section 23.319.030(C) includes standards that apply to beer and wine service that are incidental to food service in commercial zoning districts. The proposed revisions would implement the following changes for beer and wine service that is incidental to food service:

- The proposed revisions would allow beer and wine to be served in its original bottle or can, or in a container.
- The proposed revisions would allow a lounge or bar area to be established for the sole purpose of alcoholic beverage sales and consumption.
- The proposed revisions would empower the Zoning Officer to review and approve changes to hours of operation that have been established through conditions of approval with an AUP.
- The proposed revisions would remove the common permit condition that prohibits the premises to be rented by a third party.

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<sup>10</sup> Business and Professions 23958.4.

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC)

- The proposed revisions would allow advertising of alcoholic beverages and allow alcoholic beverage sales and service equipment to be visible from the public right-of-way, subject to standards in BMC 20.67 (Alcohol Product Advertising).

5. *Hours of Operation.*

*Modify hours and days of operation in commercial zoning districts.* Currently, the permitted days and hours of operation vary among commercial zoning districts, and do not account for holidays and other unique cultural and civic events that may occur on a weekday. Currently, in order for a business to extend hours of operation, a UP is required in most commercial zoning districts. To standardize the permitted hours and days of operations across districts, the proposed amendments include the changes to permitted hours of operation as shown in Table 5. Controls related to both noise and alcohol sales would remain in effect with the adoption of the changes articulated in Table 5.<sup>11</sup> While 24 hour a day operation would be allowed in the C-DMU and C-T zoning districts for commercial uses, no alcohol service use would be permitted to continue past 2:00 a.m.<sup>12</sup>

**Table 5 Hours of Operation – Proposed Amendments**

District	Allowed Hours of Operation	Permit Required to Extend Hours
C-C, C-U, <u>C-NS, C-AC</u>	<u>7:00 a.m.—12:00 midnight</u> <u>6:00 a.m.—2:00 a.m.</u>	AUP
C-N, C-E, <u>C-NS</u> , C-SO, C-W outside nodes, <u>C-SA</u>	<u>7:00 a.m.—11:00 p.m.</u> <u>6:00 a.m.--12:00 midnight</u>	<u>UP AUP</u>
C-W nodes	<u>6:00 a.m.—2:00 a.m.</u> <u>12:00 midnight with Zoning Certificate</u>	<u>UP AUP</u>

<sup>11</sup> E.g., Chapter 9.84 (Responsible Beverage Service Training), BMC Section 13.46.050 (Regulations for Operation and Conduct of Entertainment Events Involving Service or Permitted Consumption of Alcohol), Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events), Chapter 13.49 (Social Host Ordinance), Chapter 13.60 (Warning Sign Against Consuming Alcoholic Beverages During Pregnancy), Chapter 13.40 (Community Noise), Chapter 20.67 (Alcohol Product Advertising).

<sup>12</sup> State Business & Professions Code 25631 regulates any on-sale or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m. of the same day.

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

The proposed amendment would require applicants to apply for an AUP to extend their hours of operation beyond what is allowed by their current permit or zoning code.

### 6. Change of Use.

*Remove “change of use” permit requirements in commercial districts.* Currently, all commercial zoning districts except the C-T, C-DMU and C-AC require an AUP or a UP for a change of use, in addition to the permits required for the proposed use itself. In some cases, change of use requirements are different based on project size (square feet), not use. For example, General Retail is allowed in many commercial zoning districts with a ZC, but an AUP is required if it is a change of use for a space over 3,000 square feet in size.

The proposed amendments include the removal of change of use requirements in commercial zoning districts, both for individual uses and for the size of a proposed use. Any proposed use, whether in an empty (vacant) location or as a replacement for a previous use, would be subject to the same permit requirements as the underlying district; there would not be an added discretionary administrative requirement for a proposed use based solely on a change from a previous use. Uses that are different

than the immediately previous use would still be evaluated based on compatibility with the purpose of the zoning district and any potential impacts and unique characteristics that may require conditions of approval, to the degree a discretionary permit is required. There remain sections of the zoning code that would still require discretionary procedures based on other underlying size-related regulations, as well as changes in floor area or tenant reconfigurations.

7. *ATMs.*

*Allow Automatic Teller Machines (ATMs) in commercial districts with a Zoning Certificate (ZC).* Currently the BMC requires a UP for an ATM that is not associated with a financial institution. After evaluation and consultation with small businesses, staff determined this is a low priority and there are no revisions included in the proposed amendments related to ATMs.

**Additional Zoning Amendments for Planning Commission Consideration**

The Planning Commission is requested to consider and provide feedback on the following Zoning amendments, which are based on research and community engagement efforts by OED staff and were not initiated by City Council referral.

8. *Revised levels of permit discretion for Office; Business and Professional; Art/Craft Studios; Pet Stores.*

*Allow Office, Business and Professional uses and Art/Craft Studios with a ZC in all commercial zoning districts and permit Pet Stores with an AUP in the C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-DMU and C-AC zoning districts.* Currently, Office, Business and Professional, and Art/Craft Studios require an AUP in some commercial zoning districts and a ZC in others. Pet Stores currently require a UP in all but one commercial zoning district (the C-W).

Existing performance standards in the BMC (e.g., Section 13.40.050 Exterior Noise Standards) would continue to provide limits and regulations for any unintended impacts related to the above-mentioned uses. Existing and proposed permit requirements are summarized in Table 6.

**TABLE 6: OFFICE; BUSINESS AND PROFESSIONAL; ART/CRAFT STUDIOS; PET STORES – PROPOSED AMENDMENTS**

<b>Use</b>	<b>Existing</b>	<b>Proposed</b>
Office, Business and Professional	ZC in C-C, C-U, C-SA, C-DMU, C-W and C-AC; AUP in C-N, C-E, C-NS, C-T and C-SO	ZC in all commercial zoning districts
Art/Craft Studios	ZC in C-AC; AUP in all other commercial zoning districts	ZC in all commercial zoning districts

Pet Stores	ZC in C-W; UP(PH) in all other commercial zoning districts	ZC in C-W; AUP in all other commercial zoning districts
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9. *Live Entertainment.*

Allow unamplified Live Entertainment with a ZC, and permit amplified Live Entertainment with an AUP, in the C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, C-N, C-NS, C-W, C-E, MU-LI and MU-R zoning districts. Live Entertainment is defined as:

*“Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.”*

The proposed changes would allow unamplified Live Entertainment with a ZC and permit amplified Live Entertainment with an AUP, as summarized in Table 7.

**TABLE 7: LIVE ENTERTAINMENT – PROPOSED AMENDMENTS**

Zones	Permit Required for Live Entertainment	
	Unamplified	Amplified
C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC, <del>C-N, C-NS, C-W, C-E, MU-LI, MU-R</del>	ZC	AUP
<del>C-N, C-NS, C-W</del>	<del>ZC</del>	<del>UP(PH)</del>
<del>C-E</del>	<del>ZC</del>	<del>Not Permitted</del>
<del>MU-LI, MU-R</del>	<del>UP(PH)</del>	<del>UP(PH)</del>
M, MM	Not Permitted	Not Permitted

10. *Alcohol and Seated Food Service Requirements.*

Remove the requirement for seated food service to accompany distilled alcoholic beverage service in the C-T, C-NS, and C-SO zoning districts. Currently, the C-T, C-NS, C-SO and the R-BMU (BART Mixed Use) zoning districts require seated food service with distilled alcoholic beverage service. The C-C, C-U, C-N, C-E, C-SA, C-DMU, C-W and C-AC zoning districts do not have this requirement. Under this requirement, business operators must include food service in order to sell and serve distilled alcohol.

The proposed changes would remove this requirement in the C-T, C-SO, and C-NS districts and regulate the use consistently throughout commercial districts citywide. No change is proposed for the R-BMU district.

*11. Food Service Establishments – ZC for 3,000 Square Feet or Less and allowed Rental to a Third Party.*

*Allow Food Service Establishments 3,000 square feet or less with a ZC and permit food service establishments greater than 3,000 square feet with an AUP in all commercial zoning districts and in the R-SMU and R-BMU zoning districts. Several zoning districts vary permit requirements for Food Service Establishments based on floor area or square footage. In some cases, this is a legacy requirement from having a number of different types of food service (i.e., quick service vs. full service) permitted by size (square feet) in the BMC.*

In 2019, due to the evolving nature of food service and the availability of food delivery, including the ease of ordering through mobile applications, three food-related use categories (Carry Out Food Store, Quick Service Restaurant, and Full-Service Restaurant) were condensed into one use, *Food Service Establishment*. Combining these three previous uses into one removed the size distinctions that were the basis of varying permit requirements.

The proposed zoning amendments related to Food Service Establishment size include allowing Food Service Establishments under 3,000 square feet with a ZC, and permitting those of 3,000 square feet or more with an AUP, in all commercial districts and in the R-BMU if no alcohol service is provided. The proposed revisions would also remove the requirement that a Notice of Decision (NOD) be posted within 300 feet of a subject property for any Food Service Establishment that receives an AUP in the C-N, C-E, C-NS, C-SA, C-T and C-SO districts.

In addition, the proposed changes include allowing Food Service Establishments in the Arts District Overlay (ADO) with a ZC, consistent with other commercial zoning districts and its underlying zoning district (C-DMU), and would remove unique findings for food service in the Elmwood (C-E) district related to incidental use.

*Remove the restriction on renting a Food Service Establishment space to a third party.* Currently, BMC Section 23.310.030(C)(3) does not allow a restaurant space that includes incidental beer and wine service to be rented to a third party. In order to provide more flexibility and sustainability to the nature of restaurant operations, and possibly lower an additional hurdle for entrepreneurs, the proposed zoning amendments would remove the restriction on renting restaurant space to a third party.

*12. Food Service Establishment Quota.*

*Remove the quota for Food Service Establishments in the C-E zoning district.* Currently the C-E (Elmwood) zoning district is the only remaining zoning district that restricts the

total number of Food Service Establishments.<sup>13</sup> All other quotas throughout the City were eliminated in 2016, after an evaluation of the quota program citywide.<sup>14</sup> Future changes to the quota system in the Elmwood were to be brought to Council after further consultation with the Elmwood Merchants Association.<sup>15</sup> The proposed amendment would remove the quota on the number of Food Service Establishments in the C-E. OED staff presented this proposal to the Elmwood Merchants Association on April 21, 2023 and the Elmwood Merchants Association Board voted to support the recommendation to remove quotas in the C-E District.

### *13. Incidental Food Service Establishment Requirements in Manufacturing Districts.*

*Remove the requirement that incidental Food Service Establishments in buildings under 20,000 square feet in manufacturing zoning districts be indoors only.* Currently, Incidental Food Service Establishments, that is Food Service Establishment uses that are co-located with a primarily permitted use, are permitted in manufacturing zoning districts with an AUP or a UP based on square footage. The proposed zoning amendments would allow for outdoor food service in all manufacturing districts, and off-site food or beverage consumption in the MM District.

The AUP permit requirement for food service in the MU-R and the MU-LI zoning districts would still apply for spaces under 5,000 square feet.

### *14. Drug Paraphernalia in the C-T Zoning District.*

*Allow drug paraphernalia stores and the sale of drug paraphernalia in the C-T zoning district.* Currently, the C-T *Allowed Uses* section of BMC 23.204.110(B)(3) explicitly prohibits drug paraphernalia stores or the sale of drug paraphernalia in the C-T zoning district. No other zoning district includes this prohibition in the corresponding *Allowed Uses* section.

Currently, there are three existing legal Cannabis Retailers established in the C-T zoning district that offer cannabis paraphernalia. The existing regulation is also challenging to enforce since the statewide legalization of cannabis in 1996 through Proposition 215. The proposed change would remove this restriction in the C-T zoning district and would regulate this category of merchandise the same way as other commercial zoning districts, i.e. as general retail or as part of a Smoke Shop.

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<sup>13</sup> Berkeleyside, <https://www.berkeleyside.org/2012/01/17/elmwood-business-quotas-may-change-to-help-startups>, January 17, 2012.

<sup>14</sup> Berkeley City Council, *Removing Numeric Limitations (“Quotas”) in the North Shattuck (C-NS), Telegraph Avenue (C-T), and Solano Avenue (C-SO) Commercial Districts; Amending Berkeley Municipal Code Title 23*, March 29, 2016.

<sup>15</sup> *Ibid*, page 3 of 76.



### NEXT STEPS

Based upon Planning Commission and Subcommittee feedback, OED and LUP staff will draft zoning ordinance amendments and prepare for a public hearing at Planning Commission and subsequent recommendation to the City Council.

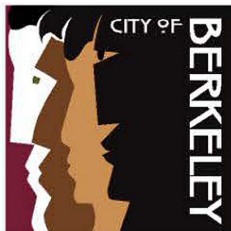
### CONTACT PERSON

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

### Attachments:

1. City of Berkeley, *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, Action Calendar, Berkeley City Council, October 15, 2019.
2. City of Berkeley, *Referrals Supporting Small Businesses*, Planning Commission Report and Presentation, July 1, 2020.
3. City of Berkeley, *Referral Beer & Wine Service in the M Districts*, Public Hearing, Meeting Minutes, December 4, 2018, Referral Project Number: PRJ0036153.



Office of the City Manager

ACTION CALENDAR

October 15, 2019

*(Continued from September 24, 2019)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

RECOMMENDATION

Refer to the Planning Commission modifications to the Zoning Ordinance that are designed to streamline the zoning review process for new or expanding small businesses in Berkeley.

SUMMARY

In April 2017, City Council referred to the City Manager analysis of a number of policy and programmatic initiatives to support the City's small businesses, including "streamlining of zoning, permitting and licensing requirements and processes." In February of 2019, six changes to the Zoning Ordinance were enacted. Subsequently, staff from the Office of Economic Development (OED) have identified eight additional potential modifications to the Zoning Ordinance for the Council and Planning Commission to consider. These eight changes are proposed in Berkeley's commercial zoning districts to make the permitting review process for small businesses less complex and time consuming:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate.
2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts.
3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards.
4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards.
5. Consider modifying the limitation on hours of operations in some commercial districts.
6. Consider the necessity of 'change of use' requirements in commercial districts.
7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts.

- 8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance.

These proposed revisions reflect input from the small business community and are seen by staff as relatively straightforward opportunities to modernize and improve the Zoning Ordinance to reflect present day conditions and community values. Each of these proposed modifications is designed to make the zoning review process for small businesses easier, clearer, and more streamlined.

FISCAL IMPACTS OF RECOMMENDATION

Modifications to the Zoning Ordinance, and the accompanying public hearings, will require staff time from the Planning Department, Office of Economic Development, and City Attorney’s Office to produce staff reports and attend the required Planning Commission and City Council hearings. Proposed modifications are designed to simplify the planning review process for desirable business activities (including new business starts and expansions) and therefore may result in a modest increase in business license tax and sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over decades to reflect Berkeley’s changing values and the changing landscape of property development and land use. Its requirements are intended to guide the City’s growth while preserving its existing character. However, businesses and people operate differently than they did 20 to 50 years ago, and some of the current permit thresholds and ordinance requirements do not recognize these changes. This results in a permitting process that can be unnecessarily lengthy and cumbersome, especially for independently-owned small businesses without the sophistication to navigate our complicated code and permitting process. Since its last major overhaul in 1999, the Zoning Ordinance has been updated in large and small ways at least 16 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense. The modifications proposed here are designed with the unique needs and challenges of small businesses in mind. Further, these recommendations follow up on the recently adopted (January 2019) zoning modifications to support small business that have improved the experiences in several cases over a period of five months.

In order to update our ordinance to better accommodate today’s locally-owned, small, independent enterprises that are highly desirable to our community, and to adhere to best practices in planning and sustainable economic development, staff recommends the eight modifications to the Zoning Ordinance listed above to provide regulatory relief for small businesses in their establishment or expansion phases. These changes are an important component and continuation of a broader effort to improve our organization’s embrace of our customer service and Strategic Plan goals to “foster a dynamic, sustainable, and locally-based economy” and “provide excellent, timely, easily-

Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR  
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accessible service and information to the community,”<sup>1</sup> while honoring the City’s commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

## BACKGROUND

On April 25, 2017, the City Council referred to the City Manager a bundle of recommendations entitled the “Small Business Support Package” with the objective to “to support the establishment of new, and sustainability of existing small and/or locally owned businesses.” Among the strategies that Council asked staff to analyze and implement included “streamlining of zoning, permitting and licensing requirements and processes for small/local businesses and not-for-profits, to reduce associated costs and delays, and, where appropriate, provide less onerous levels of review.”<sup>2</sup> In the Council’s annual referral prioritization exercise conducted in May 2017, the item was ranked as the Council’s top priority among the referrals not pertaining to housing.

Subsequently, during summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley’s small businesses and compiled its findings in a work session report and presentation to council on January 16, 2018.<sup>3</sup> Small business owners and advocates identified the lengthy permitting review process as one of the primary barriers to small business startup and expansion in Berkeley. As a result, staff recommended six modifications to the Zoning Ordinance that were adopted by the City Council on January 22, 2019.<sup>4</sup> Over six months since the zoning modifications went into effect, several business have benefited from the amendments by reducing months of permit review time and additional expenses. For example, Thai Corner at 1277 Gilman Street, the Sundhari Spa at 1605 Solano Avenue, and AxeVentures at 2566 Telegraph Avenue each were able to open their business or expand their hours via a Zoning Certificate, rather than wait several months for an AUP. In addition, the zoning modifications were acknowledged by the Northern California Chapter of the American Planning Association (NorCal APA) with an Award of Merit in Economic Planning and Development.

The goal of this second round of zoning changes is again to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. The recommendations distill specific complaints, concerns, challenges, and staff observations into concise changes to the zoning ordinance designed specifically to alleviate long permit queues, clear up applicant confusion, and streamline the experience of doing business in Berkeley. The

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

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

<sup>3</sup> See *Economic Development Worksession, Small Business Support*.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/01\\_Jan/Documents/2017-01-16\\_WS\\_Item\\_01\\_Economic\\_Development\\_Worksession.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx)

<sup>4</sup> See *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, adopted by City Council, Item 1, January 22, 2019

[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/01\\_Jan/Documents/2019-01-22\\_Item\\_01\\_Ordinance\\_7635.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/2019-01-22_Item_01_Ordinance_7635.aspx)

Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR  
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recommendations are also informed by outreach, conducted February through August 2019, to neighborhood stakeholders, business owners, elected officials and commissioners. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with purpose statements for commercial districts in section 23E of the Zoning Ordinance.

The following recommendations and rationale continue to iterate on the progress and inputs gathered from the first round of zoning amendments to support small businesses:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate. Currently the Zoning Ordinance requires an AUP for Group Class Instruction in the majority of commercial zoning districts. A new yoga studio or exercise studio, or businesses interested in adding classes to an existing business, such as an art gallery or culinary business, are subject to discretionary review through an AUP application. The AUP requirement typically lengthens the zoning review process by three to six months, and typically increases the cost by roughly \$1,000 to \$4,000.

OED staff has observed an increase in business models that employ a combination of retail and/or food consumption with instruction, training and class offerings. As the prevalence of online purchases for soft goods (e.g., clothing, books, music) increases, these creative commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts. Therefore staff recommends amending the Zoning Ordinance to permit these uses in commercial districts with a Zoning Certificate.

2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts. Section 20.12.070 of the Zoning Ordinance and Section 23E.08.020 of the Sign Code have conflicting and contradictory language related to the threshold for the design review of a new sign and the requirements for a Sign Permit. In addition, the current application for Signs and Awnings throughout the City refer to the Downtown Sign Guidelines; those guidelines have been used for the review and processing of signs beyond Downtown. This has led to confusion for applicants, business owners and sign companies wishing to do business in Berkeley. The impact is especially detrimental to small, independent business owners interested in opening a new business with a new sign.

To remedy this, staff recommends a minor modification to the language in Section 23E.08.020 Applicability of Design Review in non-residential districts to clarify the types of signs that are subject to design review and signs that are exempt. In addition, the Planning Commission should determine whether the Downtown Sign Guidelines are suitable for the evaluation of signs throughout the City or only Downtown.

3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Establishment with an Administrative Use Permit (AUP) subject to performance standards. Presently an operator of a food service establishment must obtain a Use Permit with a Public Hearing UP(PH) to serve distilled spirits. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol. The UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for food service purveyors.

Staff recommends the incidental service of distilled spirits at a food establishment be permitted via an AUP, subject to specific conditions of approval and the adopted performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. Nearby residents and property owners will still be notified of the proposed use and will have the ability to provide comments and appeal the Planning Department's decision.

4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards. Currently, tap rooms, wine bars and tasting rooms are subject to the UP(PH) process in most commercial districts. As noted above, the UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol.

Staff recommends that standalone beer and wine sales be permitted via a Zoning Certificate, subject to the performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. The City of Berkeley has an emerging wine and beer scene, resulting in additional tourism, tax revenue, manufacturing and job creation; this policy change could help to encourage its continued expansion.

5. Consider modifying the limitation on hours of operations in some commercial districts. Currently, several commercial zoning districts limit the hours of operation for businesses; e.g., businesses in the Elmwood District may not operate outside of 7am-11pm. In order for a business to exceed the existing limits, they must apply for a UP(PH) (adding approximately five to eleven months and \$5,215 in fees to the zoning approval process). This is a significant obstacle for many business owners and has served as a deterrent for entrepreneurs that may be interested in providing food and drinks to customers after 11:00 pm. Many of the City's entertainment activities end at or after 11:00 pm; in some

districts, the limits on hours of operations restricts businesses from offering complementary services. This could result in lost tax revenue, job opportunities and lost business to adjacent cities. Staff recommends that the Planning Commission consider removing the blanket restriction in some or all commercial districts, allowing business owners to maintain hours of operation that comply with any applicable State laws and are aligned with their business model and customer demand.

6. Consider the necessity for 'change of use' requirements in commercial districts triggered by square footage. Currently in some C-prefixed districts, a change of use above a certain square footage threshold necessitates an AUP or a UP(PH). A commercial change of use requirement based on square footage is atypical; surrounding jurisdictions do not impose this level of scrutiny on neighborhood serving business, which puts Berkeley at a competitive disadvantage in its attraction of new businesses to larger commercial spaces. Each district's Use Table makes allowances for different levels of discretionary review for particular uses based on square footage thresholds. This additional requirement therefore adds to the overall complexity of the zoning ordinance; as it is a supplemental requirement implemented via an asterisk, often it is initially overlooked by applicants.

Staff recommends that the Planning Commission review the appropriateness and benefits of an AUP for a Change of Use and consider eliminating the requirement in some or all commercial districts. Proposed uses would be evaluated and reviewed based on the levels of discretion defined in the Use Table for each district.

7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts. Commercial recreation uses that are classified as Arcades (e.g., Emporium and 90's Experience, Oakland, CA and the High Scores Arcade Museum, Alameda, CA) have become increasingly popular and prevalent. With the rise of internet sales posing challenges to retailers, these types of experiential commercial establishments have become increasingly important to the overall health of commercial districts. However, Berkeley's existing zoning controls make it difficult or impossible to open that type of establishment in most districts. Currently, Arcades are either prohibited or require a UP(PH), which adds approximately five to eleven months and \$5,215 in fees to the zoning approval process. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business.

ATMs also typically require an AUP or UP(PH), and in some districts are prohibited unless part of a Financial Institution. ATMs are often a beneficial and complimentary element for active commercial districts, especially if there's a lack of financial institutions in the area like some parts of Berkeley. Furthermore, the City of Berkeley is considering a policy that would require businesses to accept

cash. Staff recommends that the Planning Commission review the levels of discretion for Arcades and ATM's in commercial districts.

8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance. The Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades provide additional requirements and limitations for certain uses in the Zoning Ordinance. Several of the regulations are limiting and don't reflect the current standards in other jurisdictions. In addition, these sections would need to be modified to be consistent with the recommended Zoning Ordinance amendments above. Furthermore, the Public Convenience or Necessity findings for alcohol use and the distance buffers for Arcades are overly restrictive, don't reflect best practices and conflict with typical business practices. For example, Section 23E.16.040(A)(1)(b)(5) states "*no beer or wine may be distributed in its original bottle or can.*" Staff recommends that the Planning Commission consider updating the Special Use section of the ordinance to be reasonable, enforceable and be consistent with surrounding jurisdictions.

#### *Next Steps*

Staff recommends that City Council review and adopt this referral to Planning Commission. Subsequently, Planning Department staff would present the Planning Commission with information, case studies and analysis relevant to each proposed change, seek guidance from the Commission, and draft Zoning Ordinance amendments for the Commission's review. It is possible that some of the recommendations may be implemented as part of the Zoning Ordinance Revision Project (ZORP), a current initiative to modernize and streamline the Zoning Ordinance. Planning Commission hearings will provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups.

#### *Strategic Plan Connection*

This referral is a component of a Strategic Plan Priority Project (Small Business Support), advancing our goals to provide an efficient and financially-healthy City government; to foster a dynamic, sustainable, and locally-based economy; and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

#### ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Small businesses make up the bulk of Berkeley's economy. Small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities to shop in neighborhood commercial districts that are accessible by foot, bicycle and transit.

#### RATIONALE FOR RECOMMENDATION

Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's economic, social and civic wellbeing. These zoning changes represent the



Additional Modifications to the Zoning Ordinance to Support Small Businesses ACTION CALENDAR  
October 15, 2019

most immediate and straightforward approach the City can take to assist small businesses and potentially reduce commercial vacancies. They are designed specifically to support small independent operators seeking to invest and activate these districts, and will provide the community with needed goods and services. These changes also have the added addition of improving our city's internal permitting processes, by shortening timelines and improving customer service.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered various other changes to levels of discretionary review and other zoning compliance review for commercial uses, but recommends moving forward with the modifications proposed above while continuing to gather input on additional changes.

CONTACT PERSON

Jordan Klein, Economic Development Manager, (510) 981-7534  
Kieron Slaughter, Community Development Project Coordinator, (510) 981-2490



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: July 1, 2020  
TO: Members of the Planning Commission  
FROM: Paola Boylan, Assistant Planner  
Alene Pearson, Principal Planner  
SUBJECT: Referrals Supporting Berkeley Businesses

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### BACKGROUND

City Council has referred Planning Commission a set of five items that support Berkeley businesses and bolster Berkeley's commercial districts and commercial businesses. 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.

In light of current events, the importance of addressing business needs is a high priority as "shelter-in-place"<sup>1</sup> orders have significantly impacted and strained local businesses. The City has responded by adopting urgency ordinances to address acute needs of businesses. Addressing referrals in this report has the potential to compliment those efforts by supporting the short and long-term health of the business community.

The five business referrals presented in this report include the following:

1. Expanding the Downtown Arts District (Mayor Bates, 10/18/16)
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 12/4/18)
3. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste et al., 6/25/19)
4. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager William-Ridley, 10/15/19)
5. Referral: Update the Definition of "Research and Development" (Mayor Arreguin et al., 3/10/20)

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<sup>1</sup> Shelter-in-place - an official order, issued during an emergency that directs people to stay in the indoor place or building that they already occupy and not to leave unless absolutely necessary.

The overarching goal of these referrals is to provide flexibility to businesses that are trying to adapt to a changing market. An overview of each referral is provided below.

1. [\*\*Expanding the Downtown Arts District \(Mayor Bates, 10/18/16\)\*\*](#) - The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and commercial uses that generate pedestrian vitality in the downtown to encourage a broader economic revitalization of the area. Allowable uses in the ADO focus on pedestrian oriented ground-floor uses such as food uses with seating, art galleries, bookstores, and other culturally compatible uses, while prohibiting carry out and office uses. This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.

*Staff proposes to review both overlay boundaries and allowable uses in order to bring a set of amendments forward that meet the purposes of the ADO and the underlying zoning districts.*

2. [\*\*Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses \(City Manager, 12/4/18\)\*\*](#) - As part of the Small Business Support Package that was adopted in December of 2018, City Council reduced level of discretion for restaurants in commercial districts serving beer and wine incidental to seated food service. This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.

*Staff proposes to review existing regulations in each of the manufacturing districts in order to bring a set of amendments forward that provides flexibility to restaurants and meets the purposes of West Berkeley Plan.*

3. [\*\*Zoning Ordinance Modification for Elmwood Commercial Districts \(Councilmember Droste, 6/25/19\)\*\*](#) - The BMC currently prohibits Amusement Device Arcades in the Elmwood Commercial District (C-E district). This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

*For a more comprehensive review of this referral, staff proposes to review existing levels of discretion for Amusement Device Arcades throughout all commercial districts and develop a set of amendments that are flexible and consistent with local regulations and State laws.*

4. [\*\*Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses \(City Manager, 10/15/19\)\*\*](#) - Early in 2019, the Office of Economic Development (OED) conducted outreach to gain a better understanding of challenges and concerns facing small business. These conversations led the OED to recommend to City Council a second set of supports for small businesses. This referral presents OED's eight recommendations for consideration and discussion:

- a. **Permit group instruction with a Zoning Certificate (ZC) in commercial districts.** Currently most commercial districts permit group instruction with an Administrative Use Permit (AUP).

*Staff proposes to review existing regulations to bring a set of amendments forward that consider flexibility needed for experience-based business uses.*

- b. **Clarify design review and guidelines for signs in commercial districts –** The approval process and requirements for obtaining sign permits in commercial districts can be updated to improve clarity for applicants and consistency between projects and within districts.

*Staff proposes to review the Sign Ordinance and Zoning Ordinance to develop language that clarifies processes for obtaining a permit for new and existing signs. This will also include exploring opportunities to further codify existing processes.*

- c. **Permit the sale of Distilled Spirits that are incidental to food service with and AUP subject to performance standards -** Presently an operator of a Food Service Establishment must obtain a Use Permit with a Public Hearing (UP(PH)) to serve Distilled Spirits. The review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control – a state agency.

*Staff proposes reviewing existing permit requirements in commercial districts and developing a set of amendments to address any duplicative regulations.*

- d. **Permit standalone beer and wine sales with ZC subject to performance standards -** Currently, tap rooms, wine bars, and tasting rooms are subject to a UP(PH) process in most commercial districts.

*Staff proposes reviewing existing permit requirements for standalone beer and wine sales in the commercial districts and per ABC licensing to identify opportunities and constraints of changing existing levels of discretion.*

- e. **Review the limitation on “Hours of Operation” in commercial districts -** In order for a business to extend Hours of Operation a UP(PH) is required.

*Staff proposes to examine existing Hours of Operation for all commercial districts to identify opportunities for modifications.*

- f. **Review “Change of Use” requirements in commercial districts triggered by square footage -** Currently in some commercial districts, a change of use above a certain square footage threshold requires an AUP or UP(PH).

*Staff proposes to examine permit requirements for change of use in commercial districts, assess the need for these thresholds, and develop amendments for potential changes.*

- g. Review levels of discretion for “Amusement Device Arcades” and “Automatic Teller Machines” (ATMs) in commercial districts** - Currently Amusement Device Arcades are prohibited or require a UP(PH) to operate. ATMs also typically require an AUP or UP(PH), and in some districts, are prohibited unless part of a Financial Institution.

*Staff proposes to review requirements for Amusement Device Arcades, Amusement Devices as an incidental use, and ATMs in all commercial districts to and develop a set of amendments that are flexible and consistent with local regulations and State laws*

- h. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the potential changes to the Zoning Ordinance** – based on some of the ideas presented above, Special Use Standards may need updating.

*Staff will identify all sections of the Zoning Ordinance needing updates to reflect the changes recommended by Planning Commission in this referral package.*

- 5. [Referral: Update the Definition of “Research and Development” \(Mayor Arrequin, 3/10/20\)](#)** - Research and Development (R&D) has evolved to take on many new forms that are not included today’s definition. New technology allows R&D to be conducted in spaces that may, at first glance, appear to be an office or light industrial environment rather than a traditional “laboratory” with, for example, benches and sinks. This referral requests the definition of “Research and Development”<sup>2</sup> be updated to reflect evolving business practices.

*Staff proposes to review the existing definition, evaluate language suggested in the referral, and draft language that reflects the uses in R&D facilities.*

## **DISCUSSION**

Over the next couple of months, Planning Commission will be asked to review and consider proposed Zoning Ordinance amendments that address the five City Council referrals presented above. This section provides an overview of staff’s recommended approach and questions for Planning Commission to consider and discuss.

### **Analysis Approach**

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<sup>2</sup> BMC — [23F.04.010 Definitions](#)

Staff reviewed the five referrals, outlined research questions and identified a pattern with which to group requested amendments:

1. Activity Based Experiences
2. Allowable Uses
3. Alcohol Service
4. Sign Ordinance Updates

The sections below provide a detailed overview of rationale for grouping amendments and lists research questions. Planning Commission is asked to consider the following questions and provide staff with feedback on additional questions that need to be asked or modifications that should be made.

## 1. Activity Based Experiences

Reasoning: Emerging business models focus on creating activity-based experiences for customers. Research questions in this category examine the potential benefits of lowering level of discretion for businesses that seek to offer activity-based experiences. Addressing questions for group instructions and arcades under the same category, will allow a broader understanding of how modifications to the BMC can provide flexibility for such businesses to exist and thrive in Berkeley.

### Research Questions:

- *Group Classes* - What are the permit requirements for group classes in commercial and manufacturing districts? What are the permit requirements for serving food or beer and wine for group classes in commercial and manufacturing districts?
- *Arcades* - What are the permit requirements for arcades in commercial and manufacturing districts? What are the Special Use Standards for Arcades?

## 2. Allowable Uses

Reasoning: Research questions in this category explore where opportunities exist to facilitate activity that fosters a thriving district and enables businesses to expand their roots in Berkeley. Questions in this category have the potential to highlight simple modification that can bolster business activity throughout the City.

### Research Questions:

- *Change of Use Thresholds* – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?

- *Expanding Hours of Operation* – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?
- *Standalone Automatic Teller Machines (ATM)* – What are the regulations for standalone ATMs in commercial districts? What are the implications of lowering levels of discretion?
- *Defining Research & Development* – What are the limitations of the existing definition and the functional needs of R&D facilities?
- *Expanding the Downtown Arts District Overlay* – What are the existing uses and activity types along the current boundaries of the Downtown ADO? What additional ground-floor uses would complement the services of existing businesses in the Downtown ADO?

### 3. Alcohol Service

Reasoning: The Alcohol Beverage Control (ABC) is a state agency that regulates the sale, service, and production of alcohol. Businesses wishing to provide services involving alcohol must obtain a license by the state agency. In order to receive an ABC license, the business must first meet a set of standards enforced and regulated by the ABC, which are depended on license type<sup>3</sup>. Questions presented in this category help identify areas where there's duplication within BMC and ABC regulations. Additionally, it enables a focused conversation on the limitations placed on local flexibility by State regulations. By conducting the review and analysis of this subject matter under one category, there can be a deliberate effort to find the balance between supporting emerging business ideas, while addressing a common concern—a safe community.

#### Research Questions:

- *Distilled Spirits as incidental to food service* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?
- *Standalone Beer & Wine Sales* – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constrains exist to lower levels of discretion?
- *Updates to Special Use Standards* – What are the Special Use Standards for Alcoholic Beverages? If modifications to Uses are proposed, what updates will be necessary for Special Use Standards to maintain consistency in the BMC?

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<sup>3</sup> ABC License Types - <https://www.abc.ca.gov/licensing/license-types/>

- *Beer and Wine as incidental to a food service in the manufacturing districts* – What are the permit requirements to serve beer and wine incidental to food service in the manufacturing districts? Examine the purpose of manufacturing and rationale for beer and wine sales in these districts. What opportunities and constraints exist to lower levels of discretion?

#### **4. Sign Ordinance Updates**

Reasoning: The Sign Ordinance can be found in BMC Title 20. Planning Commission does not have purview over this Title; however, Zoning Adjustment Board and Design Review Committee must review signs in the context of development projects. The requested updates are already being considered by design staff and will be shared with the Design Review Committee for feedback. For this reason. Staff has put this referral request into a separate category. If appropriate, staff can share these edits with Planning Commission, but these updates will most likely move forward on a different schedule than those presented above.

#### Research Questions:

- *Design Review Thresholds* – What are the design review requirements for new or modified signs? What are the design review requirements for replacement signs? Is there an opportunity to clarify the design review process and applicability for signs in the BMC?
- *Master Sign Program* – What existing sign processes can be codified in the BMC through a Master Sign Program?
- *Design Review Guidelines (DRG)* – How do DRGs work with the BMC and when are they applicable?

#### Planning Commission Questions:

- *Does the grouping of these questions and considerations reflect an intuitive workflow?*
- *Will the proposed research provide ample information for Planning Commission to consider amendments that address referral requests?*
- *Are there any additional questions or considerations staff should research?*

#### **NEXT STEPS**

Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing to consider items presented and formulate recommendations for City Council.



Links:

**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)

**Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 12/4/18):**

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-4\\_Item\\_C\\_Modifications\\_to\\_the\\_Zoning\\_Ordinance\\_to\\_Support\\_Small\\_Businesses.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-4_Item_C_Modifications_to_the_Zoning_Ordinance_to_Support_Small_Businesses.aspx)

**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)

**Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19):**

[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/10\\_Oct/Documents/2019-10-15\\_Item\\_34\\_Referral\\_Response\\_Modifications.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/10_Oct/Documents/2019-10-15_Item_34_Referral_Response_Modifications.aspx)

**Referral: Update the Definition of “Research and Development” (Mayor Arreguin, 3/10/20):**

[https://www.cityofberkeley.info/Clerk/City\\_Council/2020/03\\_Mar/Documents/2020-03-10\\_Item\\_17\\_Referral\\_Update\\_the\\_definition.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/03_Mar/Documents/2020-03-10_Item_17_Referral_Update_the_definition.aspx)

# REFERRALS SUPPORTING BERKELEY BUSINESSES

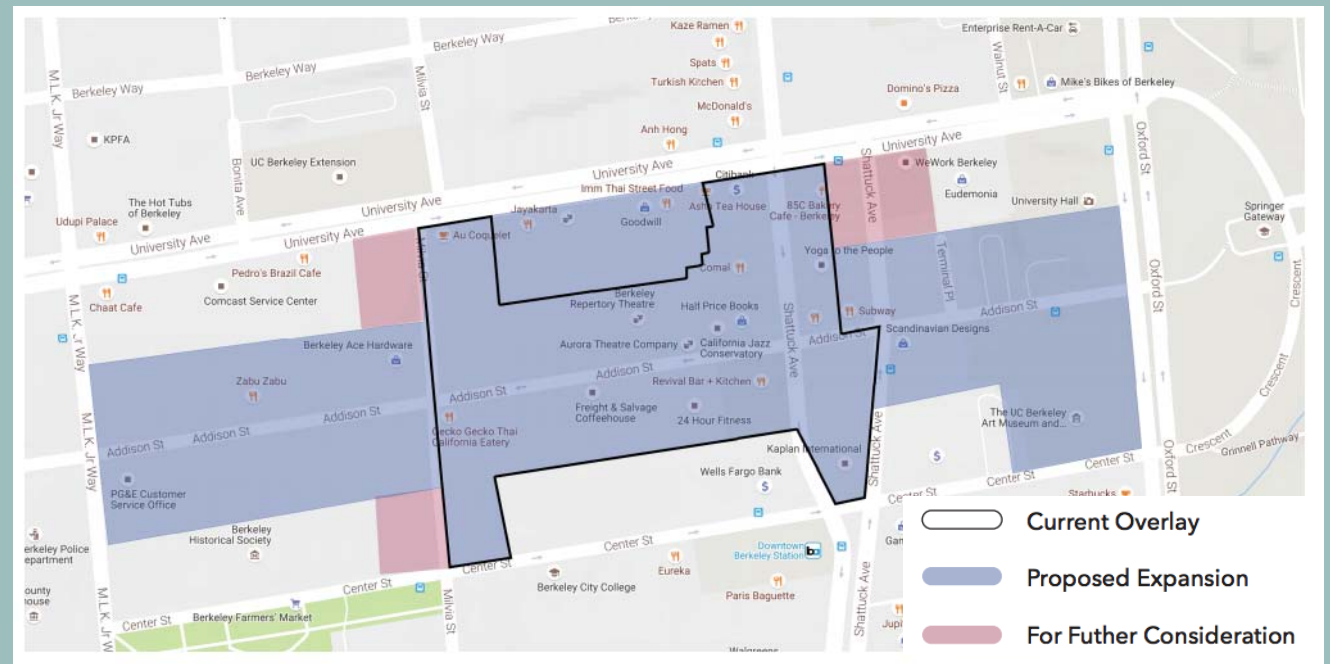
Planning Commission  
July 1, 2020

# OVERVIEW

- Overview of Referrals
- Analysis Approach
- Feedback from Planning Commission
- Next Steps

# OVERVIEW OF REFERRALS

- 1 Expanding the Downtown Arts District Overlay (ADO) (10/18/16) - This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.



## OVERVIEW OF REFERRALS

- 2 Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/4/18) - This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.
  
- 3 Zoning Ordinance Modification for Elmwood Commercial Districts (6/25/19) - This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

## OVERVIEW OF REFERRALS

- 4 Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (City Manager, 10/15/19) - This referral presents OED's eight recommendations for consideration and discussion:
- a. Permit group instruction with a Zoning Certificate (ZC) in commercial districts
  - b. Clarify design review and guidelines for signs in commercial districts.
  - c. Permit the sale of Distilled Spirits that are incidental to food service with and AUP subject to performance standards
  - d. Permit standalone beer and wine sales with ZC subject to performance standards.

## OVERVIEW OF REFERRALS

- 4
  - e. Review the limitation on “Hours of Operation” in commercial districts
  - f. Review “Change of Use” requirements in commercial districts triggered by square footage
  - g. Review levels of discretion for “Amusement Device Arcades” and “Automatic Teller Machines” (ATMs) in commercial districts
  - h. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the potential changes to the Zoning Ordinance

## OVERVIEW OF REFERRALS

- 5** Referral: Update the Definition of “Research and Development” (3/10/20) - This referral requests the definition of “Research and Development” be updated to reflect evolving business practices.



# ANALYSIS APPROACH

1. Activity Based Experiences
2. Allowable Uses
3. Alcohol Service
4. Sign Ordinance Updates

# 1. ACTIVITY BASED EXPERIENCES

## Research Questions:

**Group Classes** - What are the permit requirements for group classes in commercial and manufacturing districts? What are the permit requirements for serving food or beer and wine for group classes in commercial and manufacturing districts?

**Arcades** - What are the permit requirements for arcades in commercial and manufacturing districts? What are the Special Use Standards for Arcades?

## 2. ALLOWABLE USES

### Research Questions:

***Change of Use Thresholds*** – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?

***Expanding Hours of Operation*** – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?

## 2. ALLOWABLE USES

***Standalone Automatic Teller Machines (ATM)*** – What are the regulations for standalone ATMs in commercial districts? What are the implications of lowering levels of discretion?

***Defining Research & Development*** – What are the limitations of the existing definition and the functional needs of R&D facilities?

***Expanding the Downtown Arts District Overlay*** – What are the existing uses and activity types along the current boundaries of the Downtown ADO? What additional ground-floor uses would complement the services of existing businesses in the Downtown ADO?

## 3. ALCOHOL SERVICE

### Research Questions:

***Distilled Spirits as incidental to food service*** – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constraints exist to lower levels of discretion?

***Standalone Beer & Wine Sales*** – What are the permit requirements for such use? What are the ABC requirements to obtain a license for such use? What opportunities and constraints exist to lower levels of discretion?

### 3. ALCOHOL SERVICE

***Beer and Wine as incidental to a food service in the manufacturing districts*** – What are the permit requirements to serve beer and wine incidental to food service in the manufacturing districts? Examine the purpose of manufacturing and rationale for beer and wine sales in these districts. What opportunities and constraints exist to lower levels of discretion?

***Updates to Special Use Standards*** – What are the Special Use Standards for Alcoholic Beverages? If modifications to Uses are proposed, what updates will be necessary for Special Use Standards to maintain consistency in the BMC?

## 4. SIGN ORDINANCE UPDATES

### Research Questions:

***Design Review Thresholds*** – What are the design review requirements for new or modified signs? What are the design review requirements for replacement signs? Is there an opportunity to clarify the design review process and applicability for signs in the BMC?

***Master Sign Program*** – What existing sign processes can be codified in the BMC through a Master Sign Program?

***Design Review Guidelines (DRG)*** – How do DRGs work with the BMC and when are they applicable?

# QUESTIONS FOR PLANNING COMMISSION

- *Does the grouping of these questions and considerations reflect an intuitive workflow?*
- *Will the proposed research provide ample information for Planning Commission to consider amendments that address referral requests?*
- *Are there any additional questions or considerations staff should research?*



## NEXT STEPS

Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing to consider items presented and formulate recommendations for City Council.

1. Expanding the Downtown Arts District
2. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/04/18)
3. Zoning Ordinance Modification for Elmwood Commercial Districts
4. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (10/15/19)
5. Referral: Update the Definition of “Research and Development”

# OVERVIEW OF REFERRALS

- 1 Expanding the Downtown Arts District (10/18/16) - This referral requests expansion of the ADO boundaries as well as increased flexibility in allowable ground-floor uses.
- 2 Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses (12/4/18) - This referral requests these same regulations be extended to beer and wine service at restaurants in the manufacturing districts.
- 3 Zoning Ordinance Modification for Elmwood Commercial Districts (6/25/19) - This referral requests levels of discretion for arcades in the C-E district be re-examined and relaxed.

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, December 4, 2018**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:05 p.m.

**Present:** Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin

**Absent:** None

**Ceremonial Matters:**

1. Recognition of outgoing City Councilmembers and City Auditor.

Recess 7:55p.m. – 8:15 p.m.

**City Manager Comments:** None

**City Auditor Comments:** None

**Public Comment on Non-Agenda Matters:** 8 speakers.

**Consent Calendar**

**Public Comment on Consent Calendar and Information Items Only:** 4 speakers.

**Action:** M/S/C (Wengraf/Hahn) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

## Consent Calendar – Continued Business

**A. Safe Storage of Firearms; Adding Berkeley Municipal Code Chapter 13.69**

*(Continued from November 27, 2018)*

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,633-N.S. adding Berkeley Municipal Code Chapter 13.69 regarding safe storage of firearms.

**First Reading Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

**Financial Implications:** Minimal

Contact: Farimah Brown, City Attorney, 981-6950

**Action:** Adopted second reading of Ordinance No. 7,633-N.S.

**B. Amendment: FY 2019 Annual Appropriations Ordinance** *(Continued from November 27, 2018)*

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,634-N.S. amending the FY 2019 Annual Appropriations Ordinance No. 7,617–N.S. for fiscal year 2019 based upon recommended re-appropriation of committed FY 2018 funding and other adjustments authorized since July 1, 2018, in the amount of \$152,385,440 (gross) and \$105,727,086 (net).

**First Reading Vote:** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

**Action:** Adopted second reading of Ordinance No. 7,634-N.S.

## Consent Calendar

**1. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 4, 2018**

**From: City Manager**

**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.

**Financial Implications:** Parks Tax Fund - \$375,000

Contact: Henry Oyekanmi, Finance, 981-7300

**Action:** Approved recommendation.

## Consent Calendar

**2. Jointly Apply for and Accept \$1.3M in State of California No Place Like Home Program (NPLH) Funds and Award NPLH Technical Assistance Funds to the Berkeley Way Development**

**From: City Manager**

**Recommendation:** Adopt three Resolutions that enable the proposed Berkeley Way development project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to apply for and accept the City's Noncompetitive Allocation of State of California No Place Like Home (NPLH) housing program funds. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project;
2. Authorizing the City Manager to prepare and submit a joint application with the proposed Berkeley Way development for Berkeley's \$1,350,299 in State No Place Like Home funds;
3. Awarding \$65,000 in State No Place Like Home (NPLH) Technical Assistance program funding to the proposed Berkeley Way development; and
4. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing. The Department of Housing and Community Development requires this resolution before the City can submit an application for a specific development project.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400  
68,690–N.S. (Accept NPLH Funds); Resolution No. 68,691–N.S. (Award NPLH Funding); and Resolution No. 68,692–N.S. (Participate in NPLH).

**3. Reserving Up to an Additional \$12.5M in Housing Trust Funds for the Berkeley Way Development**

**From: City Manager**

**Recommendation:** Adopt a Resolution reserving up to an additional \$12.5M in Housing Trust Funds for the potential Berkeley Way development, bringing the total reserved amount to up to \$23.5 million, contingent on the development's securing full funding and any required land use approvals and permits in the next twenty-four months.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, 981-5400

**Action:** Adopted Resolution No. 68,693–N.S.

## Consent Calendar

### 4. 2019 Health Plan Changes

**From: City Manager**

**Recommendation:** Adopt two Resolutions:

1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) -0.44% decrease for Kaiser S1 Group #60 (Active Group); (b) -0.95% decrease for the HSA-Qualified Deductible HMO Plan (Active Group); (c) -3.38% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) 6.08% increase for Post-65 Senior Advantage (Retiree Group).

2. Approving rates for the Sutter Health Plus health plans as follows: (a) 5.04% increase for HMO Group (Active Group); and (b) 9.13% increase for Pre-Medicare HMO Group (Retiree Group).

The health plan premium rates will be effective for the period of January 1, 2019 through December 31, 2019.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, 981-6807

**Action:** Adopted Resolution No. 68,694–N.S. (Kaiser); and Resolution No. 68,695–N.S. (Sutter Health) revised in Supplemental Reports Packet #2 to correct 2018 Monthly Premium Rates and correlating percentages for Kaiser Senior Advantage Retiree Group Plan.

### 5. Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2019 for administering the Workers' Compensation Program, in an amount not to exceed \$219,000.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, 981-6800

**Action:** Adopted Resolution No. 68,696–N.S.

### 6. Contract No. 10853A Amendment: Atera Prime, Inc. DBA Emgage, Inc. for Sharepoint and Intranet Implementation Services

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10853A with Atera Prime, Inc. DBA Emgage Inc. for implementation services of Emgage's Sharepoint and Intranet implementation services, for an amount not-to-exceed \$72,000 and a total contract value not-to-exceed \$156,275 from March 28, 2018 to June 30, 2020.

**Financial Implications:** See report

Contact: Savita Chaudhary, Information Technology, 981-6500

**Action:** Adopted Resolution No. 68,697–N.S.

## Consent Calendar

### 7. Beverage Container Recycling City/County Payment Program

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit an application to the Department of Resources Recycling and Recovery (CalRecycle) for the Beverage Container Recycling City/County Payment Program for the period of December 4, 2018 through December 3, 2023; to accept funds and execute all necessary applications, payment requests, agreements and any amendments; and to appropriate funding for related expenditures, subject to securing the program funds.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** Adopted Resolution No. 68,698–N.S.

### 8. Adopt a Shared Electric Scooter Pilot Program

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the terms and conditions for a Shared Electric Scooter Pilot Franchise Program.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

**Action:** M/S/C (Arreguin/Maio) to accept revised material from staff on Item 8.

**Vote:** All Ayes.

**Action:** Moved to Action Calendar. 12 speakers. M/S/C (Worthington/Hahn) to adopt Resolution No. 68,699–N.S. amended to include provisions for privacy, reporting to Council, public survey, and compliance measures and refer comments from the Council to staff for consideration.

**Vote:** Ayes – Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Maio; Abstain – Davila.

## Council Consent Items

### 9. Appointment of Vice-President of the Council

**From: Mayor Arreguin**

**Recommendation:** Rescind Resolution No. 67,768-N.S. and adopt a Resolution establishing a one-year term for the office of Vice-President of the Council, to be appointed at the first Council meeting in December every year.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**Action:** Moved to Action Calendar. 3 speakers. M/S/C (Arreguin/Hahn) to adopt Resolution No. 68,700–N.S. as revised in Supplemental Reports Packet #2 to allow for appointments over a two-year period.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.



## Council Consent Items

- 10. Appointment of Councilmember Sophie Hahn as Vice-President of the Council**  
**From: Mayor Arreguin and Councilmember Bartlett**  
**Recommendation:** Adopt a Resolution appointing Councilmember Sophie Hahn to be the Vice-President of the Council for a term of one year beginning December 2018 to December 2019.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Moved to Action Calendar. 2 speakers. M/S/C (Maio/Worthington) to adopt Resolution No. 68,701–N.S. as revised in Supplemental Reports Packet #2 to appoint Councilmember Wengraf as Vice-President of the Council starting December 2018 and Councilmember Hahn starting December 2019.  
**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.
- 11. Revitalization of the Civic Center Park Fountain**  
**From: Mayor Arreguin, Councilmembers Harrison and Hahn**  
**Recommendation:** Refer to the City Manager to work with the Turtle Island Fountain Project in developing a plan to revitalize the fountain at Martin Luther King Jr. Civic Center Park.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Councilmember Bartlett added as a co-sponsor. Approved recommendation amended to refer to staff to consider this referral as part of the Civic Center Park visioning RFP.
- 12. Authorizing Additional Inclement Weather Shelter from December 2018-April 2019**  
**From: Mayor Arreguin**  
**Recommendation:**  
1. Authorize the City Manager to open an additional as-needed inclement weather Winter Shelter from December 2018-April 2019 to provide a safe, dry indoor location for our unhoused community;  
2. Approving the allocation of \$60,000 in funding for this additional inclement weather shelter with funds from the June 26, 2018 budget appropriation for an expanded Emergency Shelter program or by state Homeless Emergency Aid Program (HEAP) funding; and  
3. Authorizing the City Manager to amend Contract No. 10577B with Dorothy Day House for the operation of the as-needed inclement weather shelter.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, 981-7100  
**Action:** Councilmembers Davila, Hahn, and Bartlett added as co-sponsors. Approved recommendation.

## Action Calendar – Public Hearings

### C. Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses *(Continued from November 27, 2018)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and adopt the first reading of an Ordinance amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by:

1. Reducing the amount of parking required for businesses moving into existing commercial spaces;
2. Simplifying food service categories by reducing them from three to one;
3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces;
4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules;
5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and
6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Jordan Klein, Economic Development, 981-7530

**Public Testimony:** The Mayor opened the public hearing. 3 speakers. M/S/C (Wengraf/Droste) to close the public hearing.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – None; Abstain – None; Absent – Davila, Worthington.

Councilmember Worthington absent 10:05 p.m. – 10:29 p.m.

Councilmember Davila absent 10:25 p.m. – 10:33 p.m.

**Action:** M/S/C (Droste/Maio) to adopt first reading of Ordinance No. 7,635–N.S. as proposed by staff and amended as follows:

- Refer to staff and the Planning Commission to consider amendments related to beer and wine sales in the M District.
- Retain the 300-foot noticing requirement for all projects whose level of review will be reduced from UP(PH) to AUP; and report to Council on the effects of the requirement after one year.
- Retain the requirement for findings for AUPs for food establishments in the C-W district. Second reading scheduled for December 11, 2018.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:30 p.m.

**Vote:** All Ayes.

## Action Calendar – Public Hearings

**13. Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations for a portion of 1050 Parker Street / 2621 Tenth Street from a Manufacturing designation to Avenue Commercial, and amending the West Berkeley Plan land use designation from Mixed Use / Light Industrial to General Commercial (Amendments affect Assessor Parcel Numbers (APNs): 054-1763-001-03, 054-1763-010-00); and
2. Adopt first reading of an Ordinance:
  - a. Rezoning a portion of the project site from Mixed Use – Light Industrial (MU-LI) to West Berkeley Commercial (C-W) (Amendments affect APNs 054-1763-001-03 and 054-1763-010-00); and
  - b. Amending the C-W District development standards to allow for a 4-story / 50-foot tall building on the subject property (Amendments affect APNs 054-1763-001-03, 054-1763-010-00, and 054-1763-003-03); and
3. Adopt a Resolution adopting findings under the California Environmental Quality Act (CEQA) that determine how potential impacts are to be mitigated, to adopt an Initial Study / Mitigated Negative Declaration that concludes that all impacts of the rezone and re-designations can be reduced to a less-than-significant level under CEQA, and to adopt a Mitigation Monitoring and Reporting Program that ensures the measures will be implemented.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

**Action:** M/S/C (Arreguin/Maio) to suspend the rules and extend the meeting to 11:45 p.m.

**Vote:** Ayes – Maio, Bartlett, Hahn, Wengraf, Worthington, Arreguin; Noes – Davila, Harrison, Droste.

**Public Testimony:** The Mayor opened the public hearing. 10 speakers.

M/S/C (Wengraf/Harrison) to continue the public hearing to a date certain: December 11, 2018.

**Vote:** All Ayes.

## Action Calendar – Continued Business

- D. Structure for City Council Standing Policy Committees** *(Continued from November 27, 2018. Item contains supplemental materials)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the framework and procedures for standing policy committees of the City Council as part of the City's legislative process.  
**Financial Implications:** See report  
Contact: Dee Williams-Ridley, City Manager, 981-7000  
**Action:** M/S/C (Arreguin/Worthington) to hold over Items D and E to December 11, 2018.  
**Vote:** All Ayes.
- E. Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program** *(Continued from November 27, 2018)*  
**From: Councilmembers Bartlett, Worthington, and Davila**  
**Recommendation:** That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report. Recommending allowing 4 equity applicants and 2 non-equity applicants to apply and be processed by the City within 2 years.  
**Financial Implications:** Minimal  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130  
**Action:** Item E held over to December 11, 2018.
- F. Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations** *(Continued from November 27, 2018)*  
**From: Councilmembers Davila and Harrison**  
**Recommendation:** Short-term Referral to the Planning Commission and Design Review Committee (DRC) to research and draft an Urban Forestry Ordinance requiring tree planting upon completion of new residential construction and certain alterations. The Planning Commission and DRC should consider the following:  
-Establishing appropriate tree planting requirements, e.g. a ratio of trees required per square foot, for new single-family and multi-family construction, as well as qualifying alterations to existing residential buildings. -Establishing appropriate tree planting requirements for larger projects, including options to plant trees at alternative locations identified by the City and within the City limits. The developer should incur the cost of maintenance of the trees for a defined period of years after planting.  
-Establishing appropriate California Natives species requirements. Refer to the California Native Plant Society for a list of eligible trees. <https://www.cnps.org/>  
**Financial Implications:** Unknown  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120  
**Action:** Item F held over to December 11, 2018.

## Action Calendar – Continued Business

- G. City Council Short Term Referral Process – Monthly Update** *(Continued from November 27, 2018)*  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, 981-6900  
**Action:** Amended to add back to the list Item C from the 12/5/2017 agenda titled Ministerial Approval of Zoning-Compliant Affordable Housing. Moved to Consent Calendar.

## Action Calendar – New Business

- 14. Presentation: Pedestrian Master Plan Update**  
**From: City Manager**  
**Contact:** Phillip Harrington, Public Works, 981-6300  
**Action:** M/S/C (Arreguin/Worthington) to refer Item 14 to the Agenda Committee for future scheduling.  
**Vote:** All Ayes.
- 15a. Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**  
**From: Community Environmental Advisory Commission**  
**Recommendation:** Since the drought-storm-flooding cycle is predicted to get worse, refer to the City Manager to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period. The City Manager and staff should consider the following: - Comply beyond the State and Alameda County current requirements; -Encourage the treating and detaining of runoff up to approximately the 85th per-centile of water deposited in a 24-hour period; -Establish site design measures that include minimizing impervious surfaces; -Require homeowners to include flooding offsets in preparing properties for sale; - Offer option(s) for property owners to fund in-lieu centralized off-site storm-water retention facilities that would hold an equivalent volume of runoff; -Require abatements for newly paved areas over a specific size; -Make exceptions for properties that offer significantly below-market rent or sale prices; -Authorize a fee for all new construction or for title transfer to cover the cost of required compliance inspections. -Incorporate these measures for private property with similar measures for Public Works, while coordinating with EBMUD, BUSD, UCB and LBNL.  
**Financial Implications:** See report  
Contact: Viviana Garcia, Commission Secretary, 981-7460

## Action Calendar – New Business

**15b. Companion Report to Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**

**From: City Manager**

**Recommendation:** Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400; Phillip Harrington, Public Works, 981-6300

**Action:** Items 15a and 15b held over to December 11, 2018.

**16. Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

**From: Councilmember Worthington**

**Recommendation:** Adopt revisions to Chapter 3.80 in Berkeley Municipal Code (BMC) concerning Membership On Boards And Commissions to allow City Staff and/or Mayor and City Council employees to serve as a Commissioner by repealing section 3.80.030.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Item 16 removed from the agenda by Councilmember Worthington.

## Information Reports

**17. City Council Referral Process – 2018 Interim Update**

**From: City Manager**

Contact: Mark Numainville, City Clerk, 981-6900

**Action:** Received and filed.

**18. Civic Arts Commission 2018-2019 Work Plan**

**From: Civic Arts Commission**

Contact: Jennifer Lovvorn, Commission Secretary, 981-7530

**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 0 speakers.**

## Adjournment

**Action:** M/S/C (Harrison/Maio) to adjourn the meeting in memory of:

1. Deanna Despain, Former Berkeley City Clerk
2. George H. W. Bush, 41<sup>st</sup> President of the United States

**Vote:** All Ayes.

Adjourned at 11:44 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of December 4, 2018 as approved by the Berkeley City Council.

  
Mark Numainville, City Clerk

## **Communications**

### **Okinawa Environmental Justice organization**

1. Diana Bohn

### **Teenager and Grandson of Holocaust Survivors Demand Climate Action**

2. Jane Kelly

### **Adding Attic Insulation Requires Hardwired Smoke and CO Detectors**

3. David Lerman

### **Open Shelters Now**

4. Adam Kol

### **Mayor's Comments on November 9<sup>th</sup>, J Article**

5. Carol Sanders (2)

### **2-1-1 Monthly Report for October 2018**

6. Eden I&R

## **Supplemental Communications and Reports 1**

### **Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

7. Mitchel Bornstein

### **Item #18: Civic Arts Commission 2018-2019 Work Plan**

8. Gina Moreland
9. Laurie Rich

## **Supplemental Communications and Reports 2**

### **Item #4: 2019 Health Plan Changes**

10. Revised material, submitted by Human Resources

### **Item #8: Adopt a Shared Electric Scooter Pilot Program**

11. Bryce Nesbitt  
12. Irene Rosethal

### **Item #9: Appointment of Vice-President of the Council**

13. Revised material, submitted by Mayor Arreguin

### **Item #10: Appointment of Councilmember Sophie Hahn as Vice-President of the Council**

14. Revised material, submitted by Mayor Arreguin

### **Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

15. Patrick Sheahan  
16. Rick Auerback

### **Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

17. Brian Cliff  
18. Jerry McDaniel  
19. Bill Hsu  
20. Charles Pappas

### **Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations**

21. Miranda Ewell, Bernard Marszalek and Stephen Most

### **Item #15a: Referral Response: Mandatory and Recommended Green Stormwater Infrastructure in New and Existing Redevelopments or Properties**

22. Jim McGrath

### **Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

23. Evan McDonald  
24. Sharon Rudnick  
25. Carol Strand  
26. April Gilbert  
27. Jack Kurzweil  
28. Marti Grubb  
29. Mark Stuhr  
30. Fran Haselsteiner  
31. Don Melandry



- 32. Eric Friedman
- 33. Jessica Behrman
- 34. Steven Berger
- 35. Wende Micco
- 36. Judy Hunt
- 37. Barbara Gilbert

**Item #18: Civic Arts Commission 2018-2019 Work Plan**

- 38. Paula Shryne

**Supplemental Communications and Reports 3**

**Item #8: Adopt a Shared Electric Scooter Pilot Program**

- 39. Revised material, submitted by Public Works
- 40. George Porter

**Item #C: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses**

- 41. Presentation, submitted by Office of Economic Development
- 42. Loni Gray
- 43. Nicole Meyer and Chris Meyer

**Item #13: Referral Response: Reclassifying the Zoning and the General Plan and West Berkeley Plan designations at 1050 Parker Street / 2621 Tenth Street, with associated Environmental Review**

- 44. Presentation, submitted by Planning

**Item E: Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program**

- 45. Carol Denney

**Item F: Short-Term Referral to the Planning Commission and Design Review Committee to Research and Draft an Urban Forestry Ordinance Requiring Tree Planting Upon Completion of New Residential Construction and Certain Alterations**

- 46. Theo Posselt

**Item #14: Pedestrian Master Plan Update**

- 47. Presentation, submitted by Transportation Department

**Item #16: Adopt an Ordinance to amend BMC Chapter 3.80 allow Mayor and City Council employees serve as a Commissioner**

- 48. Carol Denney

**Mobility Systems**

- 49. Avotcja Jiltonilro

**In Appreciation of Councilmember Maio**  
50. Friends of Ohlone Park

**Fountain Project at MLK Civic Center Park**  
51. Unknown

## Communications

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**From:** Wu, Grace  
**Sent:** Wednesday, May 10, 2023 11:02 AM  
**Cc:** Miller, Roger  
**Subject:** FW: Waterfront Specific Plan - Item 9 - Presentation at the PRW Commission meeting - Wed - May 10 - 7pm - Frances Albrier Ctr - 2800 Park St  
**Attachments:** 09 BWSP\_BMASP DRAFT SUBCOMMITTEE REPORT.pdf

Dear Planning Commissioners,

As mentioned at our May 3<sup>rd</sup> meeting, a reminder that the Parks, Recreation, and Waterfront Commission will be receiving a presentation on the latest proposed Waterfront Specific Plan **this evening starting at 7pm at the Frances Albrier Community Center** (2800 Park St.)

See below and attached for more information. We are also anticipating an update from Parks, Recreation, and Waterfront staff at our next Planning Commission meeting on June 7<sup>th</sup>.

Sincerely,

Grace

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**From:** Miller, Roger  
**Sent:** Tuesday, May 9, 2023 6:16 PM  
**To:** Wu, Grace <GWu@cityofberkeley.info>  
**Cc:** Ferris, Scott <SFerris@cityofberkeley.info>; Erickson, Christina <CErickson@cityofberkeley.info>; Endress, Alexandra <AEndress@berkeleyca.gov>  
**Subject:** Waterfront Specific Plan - Item 9 - Presentation at the PRW Commission meeting - Wed - May 10 - 7pm - Frances Albrier Ctr - 2800 Park St

### Internal

Hi Grace,

On Wednesday, May 10, 2023, our Parks, Recreation, and Waterfront Commission will have their regular monthly meeting at the Frances Albrier Community Center, 2800 Park St.

We have an item on the agenda that will present the latest on the proposed new Waterfront Specific Plan, as follows:

Item 9. **Presentation/Action – Waterfront Specific Plan [Webinar 1](#)<sup>[1]</sup> and [Webinar 2](#)<sup>[2]</sup> and subcommittee report\***  
(Abshez/Cox/Diehm/Kawczynska).\*

The presentation is based on the presentation that we shared with Council on March 20, 2023, and then again at two community workshops on May 1 and May 3 with some small updates to the slides. Attached to this email is the PRW subcommittee draft report on the Waterfront Specific Plan.

Can you share this with the Planning Commissioners in case they would like to see this item at the PRW Commission at the Albrier Center?

The link to the full PRW Commission May 10 agenda is shown below:

To: Parks, Recreation, and Waterfront Commission  
From: Roger Miller, Secretary, Parks and Waterfront Commission

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The next regular meeting of the Parks, Recreation, and Waterfront Commission will be on Wednesday, May 10, 2023, 7pm – 9pm.

Please note that this will be a regular in-person meeting at the **Frances Albrier Community Ctr, large auditorium**, 2800 Park St, Berkeley, CA 94702. Masks are not required, but are recommended.

To view the agenda, please visit the Parks, Recreation, and Waterfront Commission webpage and scroll down to the regular meeting agenda for 05-10-2023 at the following https link:

<https://berkeleyca.gov/your-government/boards-commissions/parks-recreation-and-waterfront-commission>  
(note: remember to press CONTROL and CLICK to access the commission webpage above).

Roger Miller  
Secretary, Parks and Waterfront Commission  
2180 Milvia St, third floor  
Berkeley, CA 94704  
(510) 981-6704  
[rmiller@cityofberkeley.info](mailto:rmiller@cityofberkeley.info)

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[1] <https://berkeleyca.gov/community-recreation/events/waterfront-specific-plan-webinar-1>

[2] <https://berkeleyca.gov/community-recreation/events/waterfront-specific-plan-webinar-2>

**PARKS, RECREATION & WATERFRONT COMMISSION  
REPORT & RECOMMENDATIONS TO CITY COUNCIL  
REGARDING  
BERKELEY WATERFRONT AREA SPECIFIC PLAN**

I. Fiscal Recommendations

- A. The Commission is concerned that the Marina Fund concept is unsustainable as it presently exists. The Marina Fund should not be burdened by non-Marina expenses including street maintenance, trash collection, the maintenance of Cesar Chavez Park, special events and recreational programs. Non-Marina costs should be reassigned to Parks Department and Public Works Department budgets.
- B. A life-cycle Asset Management Program for the Marina assets should be created. Net revenue from Marina commercial uses, slip rentals, and Marina hotel operations (including Transient Occupancy Tax) should be dedicated to the Marina Fund and the Asset Management Program.
- C. Existing infrastructure needs of the Marina discussed in Section VII should be addressed by the City Council through the Marina Fund.

II. Specific Plan Vision

- A. The Berkeley Waterfront Area is a municipal treasure and regional asset reflecting years of public investment, community initiative, creativity and activism.
- B. The contributions and interests of existing Waterfront Area organizations and users to the vitality and existing experience of the Waterfront Area should be recognized and supported.
- C. The Specific Plan should preserve, protect and enhance the best aspects of the existing waterfront experience, but can support additional responsibly planned uses and activities that will invite new and diverse users. Carefully planned uses, investments, and activities can make the Berkeley Waterfront Area a still greater and broader resource to the Berkeley community and the Bay Area.
- D. The Berkeley Waterfront Area lies within a global diversity hotspot, and certain areas of the Berkeley Waterfront Area have significant ecological value that should be protected and enhanced.
- E. The Berkeley Kite Festival is recognized as one of the greatest kite festivals in the United States and should be strongly supported by the City.
- F. The Berkeley Waterfront Area has lacked a comprehensive vision and plan that maximizes its recreational, environmental, tourism, and economic development potential, which the Specific Plan should address.
- G. The Berkeley Waterfront Area is in need of additional public and private investment to maintain its utility, attractiveness and environmental value, as well as to invite new and diverse users.

**PARKS, RECREATION & WATERFRONT COMMISSION  
REPORT & RECOMMENDATIONS TO CITY COUNCIL  
REGARDING  
BERKELEY WATERFRONT AREA SPECIFIC PLAN**

III. Planning Principles

- A. Adopt a Specific Plan that will be flexible and adaptable to community interests over time without having to be frequently reopened.
- B. Adopt a Specific Plan that will be administratively easy to implement and that will thereby attract public and private investment.
- C. Recognize that the Berkeley Waterfront Area requires key infrastructure investments that must be prioritized.
  - 1. The Marina must be dredged to be functional
  - 2. The South Basin must be dredged to be functional
- D. Identify key areas of ecological value throughout the Waterfront Area and ensure their protection and enhancement.
- E. Encourage a broader variety of recreational activities, visitor-serving and hospitality uses that complement the natural environment.
- F. Require that new development be consistent with the highest design and environmental standards, including actively protecting and complementing the nearby natural environment.
- G. The Specific Plan should maximize access to the shoreline area with a continuous shoreline corridor activated with amenities, appropriate uses and opportunities to engage the water.
- H. Link all areas of the Waterfront for accessibility, including the perimeter trail at CCP with the pedestrian bridge and beyond to facilities east of I-80, including Bay Area Outreach and Recreation Program (BORP) and Aquatic Park.
- I. Adopt generalized planning guidelines and design standards that address potential development sites, preserve the Berkeley Waterfront Area's scenic and ecological values, but that are subject to future site-specific evaluation when development proposals emerge.
- J. Refrain from terminating existing leases before replacement uses and projects are identified. Do not extend long extend long term leases for areas that are designated for potential redevelopment.
- K. Improve the dirt pathway along Marina Blvd, making the connection to the park safer and more inviting. Make sure it is ADA accessible.
- L. Consider the implications of Climate Change and Sea Level Rise.

**PARKS, RECREATION & WATERFRONT COMMISSION  
REPORT & RECOMMENDATIONS TO CITY COUNCIL  
REGARDING  
BERKELEY WATERFRONT AREA SPECIFIC PLAN**

M. Consider opportunities to add wind and solar power features to the Waterfront Area.

IV. Cesar Chavez Park

A. Cesar Chavez Park is the City's largest park and is an important resource and opportunity. Cesar Chavez Park is also the most utilized public attraction within the Waterfront Area. As part of the Specific Plan, a comprehensive master plan for the Park should be developed, including a master landscape plan that will increase the Park's biodiversity, scenic attraction, and the number of sheltered areas. A list of permitted and prohibited activities should be included.

B. The 17-acre Off-Leash Area of Cesar Chavez Park is an important City-wide amenity. The Off-Leash Area is also a core use of the Park.

1. The boundaries of the Off-Leash Area (OLA) should be appropriately fenced to protect sensitive ecological areas and marked to deter off-leash activity in Park areas not intended for that purpose.

2. A mowing plan should be adopted for the entirety of Cesar Chavez Park that contains a schedule, and a viable and sustainable foxtail management program and native grass seeding plan, as well as shrubs and other native vegetation.

3. The Off-Leash Area should be dedicated to the memory of Cesar Chavez's dogs, Boycott and Huelga (Strike), with a public artwork memorial.

4. Add bulletin board improvements, including Park maps depicting the boundaries of the Off-Leash Area.

5. The Off-Leash Area hills provide visitors with panoramic views and could be vastly improved by complementary amenities, including boulders, features that people can sit on, strawbales, and appropriately located seating walls and artwork.

6. City of Berkeley should not use the Off-Leash Area to dump wood chips, in not only makes many areas unusable for dogs and people but also covers native burrowing bee habitats.

C. The landscaping biodiversity of the Park should be increased to improve its ecological value, scenic diversity, and attractiveness.

1. Background

a) The Waterfront Area is biologically rich, with more than 946 unique species documented to date, including 215 species of birds and 151

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species of insects, and that cities are increasingly recognized as important places for biodiversity conservation.

b) North America bird populations have declined 29% since the 1970s, that 2/3rds of the remaining birds are at risk of extinction, and that several threatened avian species are documented at the Waterfront, including 2 Federally listed Species (Brown Pelican, Least Tern) and 3 Species of Special Concern (White-tail Kites, Northern Harriers, Burrowing Owls)

c) There has been a 33% decline of butterflies and moth populations since 1999, with an ongoing decline of 2% per year, and global declines of insects up to 75% or more (known as the "Insect Apocalypse")

d) The Waterfront is ecologically connected with nearby Aquatic Park, Eastshore State Park, the Albany Bulb and beyond, and connections between patches are a critical element in urban biodiversity. Promote landscape and aquatic connectivity as a key design principle.

e) Access to nature is an equity issue.

f) More biodiverse green spaces are a public health benefit, and deliver greater benefits for children's cognitive development.

2. Create unstructured natural spaces filled with native vegetation that reflect California's 30x30 and Biodiversity Initiative guidelines and goals.

3. Add wayfaring and interpretative signage such as bird and wildlife identification as well as panoramic landmark signage along perimeter trail and elsewhere.

4. Improve the westernmost dirt pathways and provide more seating opportunities.

5. Working with the Shorebird Nature Center, identify a list of species - abundant and declining/disappeared - to support, including the vegetation/structures needed. Utilize Citizen Science platforms like iNaturalist and eBird to identify a core set of insects, birds, and amphibians to support.

D. Great design should be a hallmark of all future Park improvements, while maintaining the "wildness" of its character.

1. Create a "go-to" experiences not unlike the public's attraction to California Super Blooms and "Pollinator Mega-Gardens."

2. Provide more and better picnicking amenities, integrated with landscaping and topography to provide shade and shelter from windy conditions.



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3. Provide more seating areas and benches along walkways for people to rest and enjoy the views.
4. Enliven the Park with public art.
5. Enhance ADA access to Cesar Chavez Park. ADA trails should be added.
6. Soften the land/water edge in areas where it is deemed appropriate.
7. Additional public uses and amenities (including temporary uses and pop-up amenities) should be introduced in or proximate to Cesar Chavez Park that complement and support existing uses, and that invite broader use of the Park by the public, including parents and children.
  - a) A public café.
  - b) A nature interpretive center.
  - c) Public bike rental and support facilities
  - d) A kayak rental facility and launch ramp
  - e) An outdoor activity and adventure center for children and teens; perhaps including outdoor camping facilities.
  - f) Areas for outdoor weddings and private events.
8. As the Park is the City's largest public open space, well-planned festivals and events should be considered on a case-by-case basis.
9. Allow (by reconsidering the new higher fees) public safety groups, such as the ham radio operators, that provide such a valuable safety service to the COB, to use certain areas of the park for their annual practice sessions (as they used to do.)

V. Waterfront Area Development

A. Commercial/Retail Uses

1. Existing Inventory [quantifications to be confirmed]
  - a) Privately operated buildings in the Waterfront Area contain more than 20,000 square feet of indoor space and over 10,000 square feet of outdoor space available for meetings, events, and private dining.
2. Additional Commercial/Retail Uses

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- a) Authorize an additional total of 12,000 square feet of commercial/retail uses for a total of 32,000 square feet of commercial/retail uses in new, redeveloped and reconfigured spaces.
- b) Encourage commercial and retail uses that feature local businesses, products and art.
- c) Encourage pop-up rentals.
- d) Encourage food trucks where built-service is less available or less adequate.

**B. Hotels**

1. Existing Inventory [quantifications to be confirmed]

- a) The 378-room DoubleTree Hotel provides visitor-serving accommodations, and includes 24 meeting rooms and 14,000 square feet of event space, with capacity for 850 guests. The Berkeley Yacht Club and OCSC both rent their facilities for smaller events (less than 150 guests).

2. Additional Hotel facilities

- a) Authorize up to 200 new hotel rooms (and ancillary facilities/amenities) in addition to the 378 rooms of the Doubletree Hotel in existing new and redeveloped space for a total of 578 hotel rooms within the Berkeley Waterfront Area Specific Plan in new, redeveloped and/or reconfigured space in areas identified for commercial/retail development.

**C. Commercial/Retail/Hospitality Site Planning**

- 1. Identify generalized areas where commercial/retail/hotel development is permitted subject to future site-specific proposals and environmental review.
- 2. To encourage the highest quality and creativity in commercial/retail/hotel proposals in areas where commercial/retail/hotel development is permitted, allow use proposers to provide their own siting and design proposals consistent with the Specific Plan's generalized guidelines.
- 3. Encourage synergies with major Waterfront Area attractions, such as the Pier, Cesar Chavez Park, the Marina, and the water's edge.
- 4. Establish appropriate height limit zones to guide future site-specific proposals.

**D. Public Facilities**

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1. Existing Inventory [to be confirmed]
  - a) The City of Berkeley occupies nearly 13,000 square feet of floor area in several Waterfront Area buildings for administrative offices and equipment storage. Public facilities in the planning area include the waterfront office, corporation yard, and the ground floor of 125-127 University Avenue, which will soon be occupied by the Berkeley Police Department's Traffic Bureau.
  - b) [Shorebird Park and Nature Center, Adventure Playground, and children's playground]
  - c) The Berkeley Yacht Club, OCSC Sailing, Cal Adventures, and Cal Sailing—occupy landside facilities that total nearly 10,000 square feet of building area.
  - d) The Berkeley Marine Center operates a boatyard, chandlery, and fuel dock, while the Berkeley Marina Sportsman's Center operates a bait and tackle shop. Together, these marina-related commercial uses occupy close to 10,000 square feet of building area and lease over five acres of land area.
2. Additional Public Facilities to be Authorized
  - a) Provide a dedicated windsurfing launch facility
  - b) Consider creating a sandy beach accessible to children and swimmers

**E. Private Facilities**

1. Existing Inventory [quantities to be confirmed]
  - a) The second floor of the two-story, City-owned building at 125-127 University Avenue contains 6,000 square feet of rentable floor area leased to several office tenants, including two small financial services firms and a nonprofit advocacy organization.

**VI. The Pier**

- A. A new Berkeley pier should be a centerpiece of the Specific Plan and associated recreational and visitor-serving uses.

**VII. Seawall Drive**

- A. Revetment-fronting parking along Seawall Drive should be eliminated.

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B. A landscaped pedestrian promenade and bikeway should extend along Seawall Drive with appropriate visitor-serving uses located close to the Pier.

VIII. Marina Docks and Berthing Slips

A. Berkeley Marina has 15 publicly owned docks with more than 1000 slips. But the Berkeley Marine Center leases A Dock, with its 44 slips, from the city.

B. Recreational vessels in California and Alameda have decreased by 20%. Berkeley's marina has smaller slips, 48% are less than 30 ft in length. The market trend is towards larger vessels.

C. We recommend that as docks reach the end of their useful life, that the slips be reconfigured to address this market demand for boats greater than 35 ft in length.

D. We also recommend that an asset management plan, as well as a Marina Area 5-Year Capital Improvement Plan be created.

VIII. South Sailing Basin

The existing infrastructure needs of the sailing South Basin should be addressed as part of Marina infrastructure, in fiscal planning, prioritize the maintenance of operational facilities.

IX. Parking & Circulation

A. Cesar Chavez Park-serving parking should be free at all times.

B. Trailer parking should be limited along Spinnaker Way

C. Consider expanding the amount of publicly-available parking in the lots that are currently reserved for slipholders during appropriate periods.

D. A continuous bikeway should be improved around the perimeter of the Waterfront Area, supported by family-friendly bike rental facilities.

E. Consider a water taxi/ferry to create a pedestrian and bike ferry across the Marina channel.

X. Process for implementing the Plan

A. Uses authorized by the Specific Plan should be subject to site-specific review and approval by the Planning Commission with lease review by the City Council.

B. New public recreation uses and amenities should be subject to review and approval by the Parks, Recreation & Waterfront Commission.

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C. Temporary activities, events and concerts in public recreation areas should be subject to review and approval by the Parks, Recreation & Waterfront Commission.

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