



Office of the City Manager

PUBLIC HEARING
February 27, 2024

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

RECOMMENDATION

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

SUMMARY

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

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

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

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

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

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

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

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased business activity. In addition, the proposed

amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

CURRENT SITUATION AND ITS EFFECTS

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

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

Table 1: Referral Actions and Zoning Amendment Proposals

	Policy Change	Proposed Zoning Change	Ordinance Sections (Attachments 1 and 3)
2018-2019 CITY COUNCIL REFERRALS			
1.	<p>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. (Council referral dated 10/15/2019).</p> <p>Revise definitions of “Dance/Exercise/Martial Arts/Music Studio”, “Group Class Instruction”, and “Gyms and Health Clubs.”</p>	<ul style="list-style-type: none"> Removed “Dance/Exercise /Martial Arts/Music Studio” definition and revised the definition of “Group Class Instruction” (simplified to “Group Instruction”). (Section 22) Replaced “Gyms and Health Clubs” use with new “Health and Fitness Facility” use and definition. (Section 25) Changed permit requirements and size thresholds. (Sections 1, 2 and 3) 	<p>1 2 3 4 11 13 22 24 25 26 27</p>

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

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

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

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

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

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

Discussion of Proposed Changes

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

1. Group Class Instruction.

Allow Group Class Instruction with a Zoning Certificate (ZC) in the C-N, C-E, C-NS and C-SO zoning districts. Currently, most commercial zoning districts require an AUP for group class instruction. Recent business models focus on creating activity or experience-based enterprises for patrons alongside traditional retail sales (e.g., painting or art classes accompanying the sales of paint and art supplies, or pattern and fabric sales connected with sewing classes).

The proposed amendments would:

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

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

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

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

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

Dance, exercise and aerobics are proposed to be captured in the definition of “Health and Fitness Facility.” “Music Studio” is proposed to be removed from the definition because the use is captured in the existing definition of “Media Production.” Music Instruction is proposed to be included under “Group Instruction.”¹ Note that the definition and permit requirements for a “Commercial Recreation Center” remain unchanged, which permit activities and uses that include indoor rock climbing, bowling alleys, bingo parlors, skating rinks, billiard or pool halls, miniature golf courses and axe throwing.

2. *Incidental Distilled Spirits.*

Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts and the MU-LI and MU-R zoning districts, and with a UP in the R-BMU zoning district. Currently, an operator of a Food Service Establishment must obtain a Use Permit to serve Distilled Spirits that are incidental to food service, which is a process separate from, and in addition to, the State of California Division of Alcohol Beverage Control (ABC) review process. The proposed amendments would permit incidental sale and service of distilled alcoholic beverages with an AUP subject to performance standards. The proposed changes are included in Table 3, below and would also include an amendment to BMC Section 23.310.030(C) – Incidental Beer and Wine Service Standards to condition Food Service Establishments applying to expand alcoholic beverage service.

Table 3: Beer & Wine and Distilled Spirits Incidental to Food Service – Proposed Amendments

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

3. *Stand-Alone Beer and Wine.*

Permit stand-alone Beer and Wine Sales and Service with an Administrative Use Permit (AUP), subject to performance standards, in all commercial zoning districts. Currently, stand-alone Beer and Wine Sales and Service uses (e.g., tap rooms, wine bars, and tasting rooms) are permitted in the C-C, C-U, C-SA, C-T, C-DMU, C-W,

¹ Note: This would be separate from a home occupation use in a residential district that includes small group lessons as an incidental use, such as private piano lessons taught in a home.

and C-AC zoning districts with a Use Permit, which is a process separate from, and in addition to, the State of California's Alcoholic Beverage Control (ABC) review process. The proposed amendments would permit stand-alone sale and service of beer and wine with an AUP in the above listed districts.

4. *Alcoholic Beverage Sales and Service Standards.*

Update the Special Use Standards for Alcoholic Beverage Sales in BMC Section 23.310.030(C) to align with the proposed Zoning amendments. The proposed amendments include revisions to the standards for Alcoholic Beverage Sales and Service in BMC 23.310.020 and BMC 23.310.030.² These changes include revised findings for public convenience and necessity that provide updated standards consistent with ABC requirements for staff to reference when evaluating permit applications and/or preparing findings for a proposed permit involving alcoholic beverage sales or service.

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

- Currently, a Use Permit is required to begin or increase alcoholic beverage sales or service. The proposed revisions would permit service of distilled spirits incidental to food service with an AUP.
- The proposed revisions would amend the findings of undue concentration of alcoholic beverage sales and service uses to be consistent with State of California definitions found in Business and Professions Code Section 23958.4³ and current ABC regulations.
- The proposed revisions would amend the *Findings of Convenience and Necessity* to include “economic development benefits to the surrounding area”, and to require that *only one, not all*, of the listed findings are required for permit issuance.
- The proposed revisions would remove existing requirements that the Berkeley Police Department (BPD) review proposed establishments to determine whether they would be expected to add crime to the area or whether an applicant's previous alcohol-related violations at another location would

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

³ California State Code, Business and Professions 23958.4.
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=23958.4&lawCode=BPC

indicate a high likelihood of further violations. These findings are difficult to make as there are no objective standards to evaluate the potential of a business to negatively impact public safety in the future, for BPD to forecast crime at a particular location, or to attribute any predicted increase in crime to the operation of a business that does not yet exist. BPD will instead be notified of all approved alcohol-related permits along with their conditions of approval. Furthermore, additional language has been added to the standard conditions of approval to increase safety and improve authentic identification verification.

Revise Alcoholic Beverage Sales General Requirements, Alcoholic Beverage Service When Incidental to Food Service. BMC Section 23.310.030(C) includes standards that apply to beer and wine service that are incidental to food service in commercial zoning districts. The proposed revisions would implement the following changes for beer and wine service that is incidental to food service:

- The proposed revisions would allow beer and wine to be served in its original bottle or can, or in a container.
- The proposed revisions would allow a lounge or bar area to be established for the sole purpose of alcoholic beverage sales and consumption.
- The proposed revisions would empower the Zoning Officer to review and approve changes to hours of operation that have been established through conditions of approval with an AUP.
- The proposed revisions would remove the common permit condition that prohibits the premises to be rented by a third party.
- The proposed revisions would allow advertising of alcoholic beverages and allow alcoholic beverage sales and service equipment to be visible from the public right-of-way, subject to standards in BMC 20.67 (Alcohol Product Advertising).

5. Hours of Operation.

Modify hours and days of operation in commercial zoning districts. Currently, the permitted days and hours of operation vary among commercial zoning districts, and do not account for holidays and other unique cultural and civic events that may occur on a weekday. Currently, in order for a business to extend hours of operation, a UP is required in most commercial zoning districts. To standardize the permitted hours and days of operations across districts, the proposed amendments include the changes to permitted hours of operation as shown in Table 4. Controls related to both noise and alcohol sales would remain in effect with the adoption of the changes articulated in Table 3.⁴ While 24 hour a day operation would be allowed in the C-

⁴ E.g., Chapter 9.84 (Responsible Beverage Service Training), BMC Section 13.46.050 (Regulations for Operation and Conduct of Entertainment Events Involving Service or Permitted Consumption of Alcohol),

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

Table 4: Hours of Operation – Proposed Amendments

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

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

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).

⁵ California State Business & Professions Code 25631 regulates any on-sale or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m. of the same day.

6. *Change of Use.*

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

The proposed amendments include the removal of change of use requirements in commercial zoning districts, both for individual uses and for the size of a proposed use. Any proposed use, whether in an empty (vacant) location or as a replacement for a previous use, would be subject to the same permit requirements as the underlying district; there would not be an added discretionary administrative requirement for a proposed use based solely on a change from a previous use. Uses that are different than the immediately previous use would still be evaluated based on compatibility with the purpose of the zoning district and any potential impacts and unique characteristics that may require conditions of approval, to the degree a discretionary permit is required. There remain sections of the zoning code that would still require discretionary procedures based on other underlying size-related regulations, as well as changes in floor area or tenant reconfigurations.

7. *ATMs.*

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

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

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

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

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

Allow Art/Craft Studios with a ZC in all commercial zoning districts and permit Pet Stores with an AUP in the C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-DMU and C-AC zoning districts. Art/Craft Studios require an AUP in some commercial zoning districts and a ZC in others. Pet Stores currently require a UP in all but one commercial zoning district (the C-W). Existing performance standards in the BMC (e.g., Section 13.40.050 Exterior Noise Standards) would continue to provide limits and regulations for any unintended impacts related to the above-mentioned uses. Existing and proposed permit requirements are summarized in Table 5.

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

Use	Existing	Proposed
Office, Business and Professional	AUP in C-N, C-E, C-NS, C-T and C-SO	AUP in C-N, C-E and C-SO zoning districts
	ZC in C-C, C-U, C-SA, C-DMU, C-W and C-AC	ZC in all other commercial zoning districts
Art/Craft Studios	ZC in C-AC AUP in all other commercial zoning districts	ZC in all commercial zoning districts
Pet Stores	ZC in C-W UP(PH) in all other commercial zoning districts	ZC in C-W AUP in all other commercial zoning districts

9. Live Entertainment.

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

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

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

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

TABLE 6: LIVE ENTERTAINMENT – PROPOSED AMENDMENTS

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

10. Alcohol and Seated Food Service Requirements.

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

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

11. Food Service Establishments

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

In 2019, due to the evolving nature of food service and the availability of food delivery, three food-related use categories (Carry Out Food Store, Quick Service

Restaurant, and Full-Service Restaurant) were condensed into one use, *Food Service Establishment*. Combining these three previous uses into one removed the size distinctions that were the basis of varying permit requirements.

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

In addition, the proposed changes include allowing Food Service Establishments in the Arts District Overlay with a ZC, consistent with other commercial zoning districts and its underlying zoning district (C-DMU), and would remove unique findings for food service in the Elmwood (C-E) district related to incidental use and limits on food establishment uses (see 12, below).

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

12. Elmwood Food Service Establishment Quota.

Remove the quota for Food Service Establishments in the C-E zoning district. Currently the C-E (Elmwood) zoning district is the only remaining zoning district that restricts the total number of Food Service Establishments.⁶ All other quotas throughout the City were eliminated in 2016, after an evaluation of the quota program citywide.⁷ Future changes to the quota system in the Elmwood were to be brought to Council after further consultation with the Elmwood Business Association.⁸ The proposed amendment would remove the quota on the number of Food Service Establishments in the C-E. OED staff presented this proposal to the Elmwood Business Association on April 21, 2023 and the Elmwood Business

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

⁷ 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.

⁸ Ibid, page 3 of 76.

Association Board voted to support the recommendation to remove quotas in the C-E District.

13. Incidental Food Service Establishment Requirements in Manufacturing Districts.

Remove the requirement that incidental Food Service Establishments in buildings under 20,000 square feet in manufacturing zoning districts be indoors only.

Currently, Incidental Food Service Establishments—i.e., Food Service Establishment uses that are co-located with a primarily permitted use—are permitted in select manufacturing (or “M-prefixed”) zoning districts with an AUP or a UP based on square footage. The proposed zoning amendments would allow for **outdoor** food service in all manufacturing districts, and off-site food or beverage consumption (i.e. “to-go”) in the MM District.

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

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

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

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

Existing Permitted Land Uses & Proposed Zoning Ordinance Amendments

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

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

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

Miscellaneous Technical Edits

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

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

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

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

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

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

BACKGROUND

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

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

RATIONALE FOR RECOMMENDATION

The goal of these Zoning Ordinance amendments is to simplify and streamline the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's fiscal, social and civic wellbeing.

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

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Attachments:

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

ORDINANCE NO. -N.S.

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

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

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

Table 23.202-1: Allowed Land Uses in Residential Districts

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

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

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

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

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

Table 23.204-1 Allowed Uses in the Commercial Districts

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

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

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

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

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

~~B. Group Class Instruction.~~

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

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

C. Gyms and Health Clubs

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

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

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

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

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

- 1. Include a storefront window display; or

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

Table 23.204-6: Office Uses Subject to Transparency Requirement

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

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

Table 23.204-7: Department Store Permit Requirements

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

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

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

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

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

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

2. Numerical and Size Limitations.

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

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

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

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

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

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

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

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

42 Mixed-Use Permits Required.

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

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

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

53. Vehicle Sales.

a. **Applicability.**

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

b. **Standards.**

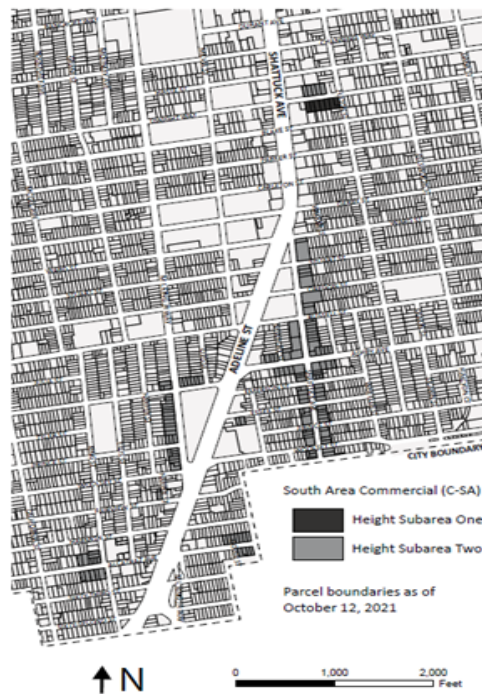
- i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.
 - ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited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

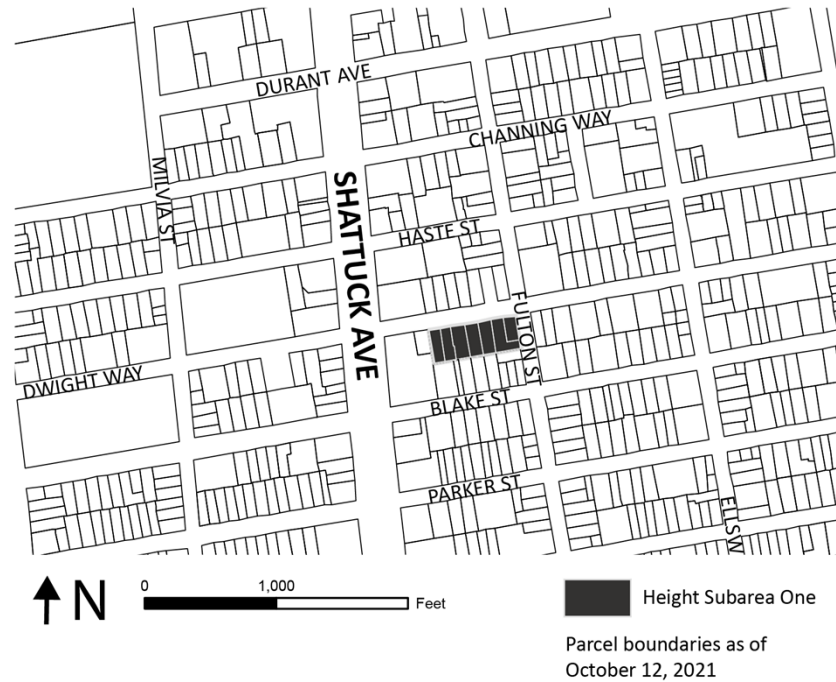
Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

Table 23.204-28. C-SA Maximum Building Heights

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

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





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

B. Allowed Land Uses.

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

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

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

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

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

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

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

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

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

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

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

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

75. Upper Story Uses.

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

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

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

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

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

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

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

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

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

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

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

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

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

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

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

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

B. Hours of Operation.

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

2. Hours of Operation Defined.

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

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

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

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

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

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

Table 23.302-1: Allowed Hours of Operation

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

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

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

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

~~4. Hours of Operation Defined.~~

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

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

~~These limitations do not apply to:~~

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

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

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

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

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

Table 23.302-2: Permit Requirements for Live Entertainment

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

1. Allowed Activities.

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

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

ED. Outdoor Uses.

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

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

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

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

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

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

E. Food Service Establishments.

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

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

Table 23.302-6: Permit Requirements for Food Service Establishments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Parking Lot/Structure.

~~1. Permits Required.~~

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

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

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

Notes:

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

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

H. Residential Use, Ground-Floor Units.

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

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

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

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

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

A. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)

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

B. Use Limitations.

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

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

1. Licensing.

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

2. Service.

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

3. Operation.

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During ~~operating the food service establishment's~~ hours of operation, ~~100 percent of the service~~ all customer accessible areas shall be ~~designed and used~~ available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- ~~d. At no time shall the operator rent the restaurant space to a third-party.~~
- ~~e.d.~~ The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
 - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and

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

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

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

4. Advertising.

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

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

5. Training.

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

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

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

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

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

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

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

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

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

D. **“D” Terms.**

- ~~1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.~~
- 2.1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.
- 3.2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.
- 4.3. **Density.** See 23.106.100 - Residential Density
- 5.4. **Density Bonus.** See 23.332.020 (Definitions).
- 6.5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.
- 7.6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
- 8.7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).

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

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

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

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

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

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

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

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

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

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

9. **Gyms and Health Clubs.** ~~An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.~~

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

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

23. Hedge. Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.

34. Height of Building, Average. See 23.106.090.A (Average Building Height).

45. Height of Building, Maximum. See 23.106.090.B (Maximum Building Height).

56. Home Occupation. A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

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

(1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.

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

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

67. Hospital. A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.

78. Hot Tub. A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.

89. Hotel, Residential. A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.

910. Hotel, Tourist. A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days.

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

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

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

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

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

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

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



Planning and Development Department
Land Use Planning Division

STAFF REPORT
October 4, 2023

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Zoning Amendments for Berkeley Business Public Hearing

RECOMMENDATION

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

SUMMARY

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

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

FISCAL IMPACTS OF RECOMMENDATION

As noted in the June 7, 2023 Planning Commission report, the proposed amendments are intended to simplify the planning review process for business activities, including new business starts and expansions. Therefore, the proposed amendments may result in a modest increase in business license tax and sales tax revenues due to increased

business activity. In addition, the proposed amendments may result in a modest decrease in staffing-related expenditures and land use permitting fee collections, as more uses would be permitted “by right” rather than through a discretionary permitting process.

CURRENT SITUATION AND ITS EFFECTS

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

OED staff has observed a specific challenge encountered by small, independent enterprises—the intricate path of maneuvering through the permit review procedure, and associated timelines and financial implications.

In order to better accommodate today's small, independent enterprises, OED staff propose a series of amendments. While they would apply to businesses of all sizes, these proposed zoning amendments aim to establish a streamlined, cost-effective, and expedited process tailored to smaller businesses. These changes further the City of Berkeley's Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily- accessible service and information to the community," while honoring the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND

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

Table 1 Referral Actions and Zoning Amendment Proposals

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

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

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

Changes Subsequent to June 7, 2023 Planning Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Existing Land Uses and the Proposed Zoning Ordinance Amendments

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Environmental Review Status

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

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

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

RATIONALE FOR RECOMMENDATION

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

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

ALTERNATIVE ACTIONS CONSIDERED

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

NEXT STEPS

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

CONTACT PERSON

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

Attachments:

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

Referenced Council Referrals:

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

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

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

Commented [HJ2]: 1. Group Class Instruction

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

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

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

Table 23.204-1 Allowed Uses in the Commercial Districts

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

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

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

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

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

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

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

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

B. Group Class Instruction.

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

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

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

C. Gyms and Health Clubs

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

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

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

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

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

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

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

Table 23.204-6: Office Uses Subject to Transparency Requirement

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

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

Table 23.204-7: Department Store Permit Requirements

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

Note:

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

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

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

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

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

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

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

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

2. Numerical and Size Limitations.

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

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

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

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

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

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

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

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

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

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

42 Mixed-Use Permits Required.

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

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

- a. **Applicability.**

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

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

iii. Expansions or modifications of existing vehicle sales are:

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

b. Standards.

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

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

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

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

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

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

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

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

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

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

Table 23.204-28. C-SA Maximum Building Heights

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

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



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

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

B. Allowed Land Uses.

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

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

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

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

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

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

64. **Office Uses.**

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

TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS

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

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

- i. Include a window display; or

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

75. Upper Story Uses.

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

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

Commented [HJ12]: 5. Hours of Operation

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

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

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

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

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

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

Commented [HJ14]: 1. Group Class Instruction

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

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

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

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

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

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

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

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

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

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

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

Commented [HJ18]: 5. Hours of Operation

B. Hours of Operation.

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

2. **Hours of Operation Defined.**

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

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

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

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

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

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

c.

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

Table 23.302-1: Allowed Hours of Operation

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

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

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

4. Hours of Operation Defined.

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

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

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

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

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

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

Commented [HJ21]: 9. Live Entertainment.

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

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

Table 23.302-2: Permit Requirements for Live Entertainment

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

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

1. Allowed Activities.

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

ED. Outdoor Uses.

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

TABLE 23.302-32: PERMIT REQUIREMENTS FOR OUTDOOR USES

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

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

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

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

E. Food Service Establishments.

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

Table 23.302-6: Permit Requirements for Food Service Establishments

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

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

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

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

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

5.1. **Outdoor Cafe Seating.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commented [HJ26]: TECHNICAL EDITS to correct numbering

G. Parking Lot/Structure.

1. Permits Required.

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

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

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

Notes:

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

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

H. Residential Use, Ground-Floor Units.

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

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

TABLE 23.302-~~10-8~~: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING

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

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

Commented [HJ27]: 4. Alcoholic Beverage Sales Standards

A. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 23.310-1: Permits Required for Alcoholic Beverage Service

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

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

B. Use Limitations.

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

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

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

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

2. **Service.**

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

3. **Operation.**

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

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

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

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

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

4. Advertising.

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

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

5. Training.

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

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

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

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

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

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

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

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

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

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

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

Commented [HJ31]: 1. Group Class Instruction

D. "D" Terms.

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

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

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

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

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

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

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

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

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

Commented [HJ33]: 1. Group Class Instruction

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

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

Commented [HJ34]: 1. Group Class Instruction

- 9. ~~**Gyms and Health Clubs.** An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.~~

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

Commented [HJ35]: 1. Group Class Instruction

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

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

- 23. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.

- 34. **Height of Building, Average.** See 23.106.090.A (Average Building Height).

- 45. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).

- 56. **Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

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

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

67. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
78. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
89. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
910. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
4011. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
4112. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
- (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
 - (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
 - (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

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

Commented [HJ37]: 1. Group Class Instruction

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

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

DRAFT



Office of the City Manager

ACTION CALENDAR

October 15, 2019

(Continued from September 24, 2019)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

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

RECOMMENDATION

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

SUMMARY

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

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

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

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

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

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

accessible service and information to the community,”¹ 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.”² 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, 2018.³ 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, 2019.⁴ 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

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

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

³ 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

⁴ 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Next Steps

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

Strategic Plan Connection

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

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

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

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

The public may participate in this hearing by remote video or in-person.

The Department of Planning and Development is proposing amendments to the City's Zoning Ordinance (Title 23) to establish a streamlined, cost-effective, and expedited review and approval process tailored to smaller businesses, while preserving the city's commitment to public participation and ensuring that new uses are compatible with neighboring land uses. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.150 R-BMU Residential BART Mixed Use District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use-Specific Permit Requirements and Regulations
- 23.204.080 C-E Elmwood Commercial District
- 23.204.100 C-SA South Area Commercial District
- 23.204.110 C-T Telegraph Avenue Commercial District
- 23.204.120 C-SO Solano Avenue Commercial District
- 23.204.130 C-DMU Downtown Mixed-Use District
- 23.204.150 C-AC Adeline Corridor Commercial District
- 23.206.020 Allowed Land Uses (Manufacturing Districts)
- 23.302.020 Supplemental Use Regulations (Hours of Operation)
- 23.302.070 Supplemental Use Regulations (Use-Specific Regulations)
- 23.310.020 Alcoholic Beverage Sales and Service (General Alcohol Service Requirements)
- 23.310.030 Alcoholic Beverage Sales and Service (Incidental Alcohol Service Requirements)
- 23.324.040 Nonconforming Uses
- 23.502.020 Glossary

The hearing will be held on, February 27, 2024 at 6:00 pm in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of February 15, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Justin Horner, Associate Planner, at 510-981-7476.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

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Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 15, 2024.

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Mark Numainville, City Clerk

