



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, May 16, 2018
7:00 PM

North Berkeley Senior Center
1901 Hearst Ave / MLK Jr. Way

See “MEETING PROCEDURES” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Mary Kay Lacey, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by, Councilmember Hahn, District 5
Kapla, Robb William, for Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Worthington, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: June 20, 2018.**
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on April 18, 2018.
8. **Future Agenda Items and Other Planning-Related Events:** None.

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

9. Action: **Public Hearing: Urban Agriculture**
Recommendation: Hold a public hearing and consider the new Urban Agriculture chapter (BMC 23C.26), and modifications to the Definitions chapter (23F.04) and *Uses Permitted Tables* in applicable Districts.
Written Materials: Attached.
Web Information: N/A.
Continued From: 3/21/2018.

10. Discussion: **Council Referral: Allowing Existing Nurseries to incorporate Cannabis Sales**
Recommendation: Review initial analysis by staff and provide comments.
Written Materials: Attached.
Web Information: N/A.
Continued From: N/A.

11. Discussion: **Transition of Subcommittee on Affordable Housing and Community Benefits – Reconstitute and Refocus**
Recommendation: Discuss the status of the Subcommittee.
Written Materials: N/A.
Web Information: N/A.
Continued From: N/A.

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

Information Items: None.

Communications:

- 2018-05-16 Nathan Stalnaker – Regional Measure 3
- 2018-05-16 Jordan Klein – COB Arts and Culture Plan

Late Communications: None.

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

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

Procedures for Correspondence to the Commissioners:

- To have materials included in the packet, the latest they can be submitted to the Commission Secretary is close of business (5:00 p.m.), on Tuesday, eight (8) days prior to the meeting date.
- To submit late materials for Staff to distribute at the Planning Commission meeting, those materials must be received by the Planning Commission Secretary, by 12:00 p.m. (noon), the day before the Planning Commission meeting.
- Members of the public may submit written comments at the Planning Commission meeting. To submit correspondence at the meeting, please provide 15 copies, and submit to the Planning Commission Secretary before the start time of the meeting.
- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Written comments/materials should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: ***If you object to a project or to any City action*** or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible

location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **April 18, 2018**

3 The meeting was called to order at 7:05 p.m.

4 **Location:** North Berkeley Senior Center, Berkeley, CA

5 **Commissioners Present:** Steve Martinot, Benjamin Beach, Robb William Kapla, Christine
6 Schildt, Jeff Vincent, Ryan Lau (Rob Wrenn’s substitute), Prakash Pinto, Benjamin Fong, Mary
7 Kay Lacey.

8 **Commissioners Absent:** Rob Wrenn (excused).

9 **Staff Present:** Alex Amoroso, Alene Pearson, Sydney Stephenson, and Alisa Shen.

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

11 **CONSENT CALENDAR:** None.

12 **PUBLIC COMMENT PERIOD:** 3 speakers, including a member from Ohlone tribe regarding the
13 1900 4th Street development proposal.

14 **PLANNING STAFF REPORT:** The next meeting is on May 16th. Staff gave a brief introduction
15 to the Council Joint Subcommittee on the Implementation of State Housing Laws that met last
16 night (April 17th).

17 **COMMUNICATIONS IN PACKET:**

- 18 • 2018-04-18 C. Susanna - Commentary on Parcels at 1050 Parker St. and 2621 Tenth St.
19

20 **LATE COMMUNICATIONS** (Received after the Packet deadline): None.

21 **LATE COMMUNICATIONS** (Received and distributed at the meeting):

- 22 • 2018-04-18 Elizabeth Shaughnessy, Berkeley Class School rezone
23 • 2018-04-18 Jana Olson, Proposed rezoning of 1050 Parker Street from MULI to CW

24 **CHAIR REPORT:** The Chair encouraged the public to look at the Joint Subcommittee agenda
25 packet for more information on the new State Housing laws.

26 **COMMITTEE REPORT:** No report.

27 **7. APPROVAL OF MINUTES:**

28 Motion/Second/Carried (CS/RK) to approve the Planning Commission Meeting Minutes from
29 March 21, 2018. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Vincent, Lau, Pinto, Fong.
30 Noes: None. Abstain: None. Absent: None. (9-0-0-0)

31

32 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** Staff reported
33 on a possibility of a public hearing on urban agriculture referrals and cannabis nurseries at the
34 next Planning Commission (PC) meeting.

35 **AGENDA ITEMS**

36 **9. Action: Public Hearing: 1050 Parker Street Parcels Rezone and General**
37 **Plan Amendment**

38 This item was previously presented at the February 21, 2018 PC meeting and was re-noticed
39 because the referral required additional action: 1) re-designation and rezone of parcels from
40 MULI to C-W; and 2) text amendment to the C-W to allow a maximum height of 50' for the
41 three parcels. Staff reported that there is a letter attached from Kaiser regarding their interest
42 in the site.

43 Public Comments: 5 speakers.

44 The Commission discussed this item and made the following motions:

45 Motion/Second/Carried (RK/CS) to close the public hearing. Ayes: Lacey, Beach, Martinot,
46 Schildt, Kapla, Vincent, Lau, Pinto, Fong. Noes: None. Abstain: None. Absent: None. (9-0-0-
47 0)

48
49 Motion/Second/Carried (PP/RK) to recommend the following considerations to the Council:

- 50 1) The Commission does not have sufficient and current environmental review (CEQA)
51 information for the revise 1050 Parker project to make/recommend the CEQA related
52 findings for the rezone/re-designation actions.
- 53 2) The PC is aware of changes to the project and the need for additional use permits (modified
54 uses allowed for the project and new Pardee Street parking), along with the requisite CEQA
55 analysis.
- 56 3) The use of the rezoned/re-designated parcels should be limited to Medical Office and Use
57 – this could be added to the text amendment language, though concern is expressed about
58 “spot zoning.”
- 59 4) Relocation of the displaced (from the Pardee Street parcels) auto repair and other
60 industrial/repair type businesses should be as part of the project approval. This should be
61 done at the expense of the developer of the 1050 Parker Street project (Wareham).
- 62 5) Any rezone/re-designation policy analysis should include a listing of all related policies and
63 goals from the West Berkeley Plan. The current analysis is limited.
- 64 6) Creative parking solutions, such as free patient and/or staff parking, committed on the street
65 spots, modified parking ratios should be considered for the project.

66 Ayes: Lacey, Beach, Schildt, Kapla, Vincent, Lau, Pinto, Fong. Noes: None. Abstain: Martinot.
67 Absent: None. (8-0-1-0)

68 **10. Discussion: Adeline Corridor Project Update**

69 Staff presented an update on the Adeline Corridor Project, including the background of the
70 project, work completed to-date, and the next steps and future community engagement.

71 Public Comments: 4 speakers.

72 The Commission asked staff questions about the project’s process and status. The PC
73 asked how the input from the small group meetings are going to be funneled down and
74 prioritized. It is important to let the community know how the City is prioritizing the trade-offs.
75 The Commission also cautioned about narrowing the scope, and instead allowing the
76 community members to make the choices to limit and to understand the trade-offs. The PC
77 also requested that the outcome of the small group meetings be presented at the next
78 update for this project. Community members of Latino and Asian ethnicities should be
79 involved in the community outreach as well.

80 **The meeting was adjourned at 9:54 pm**

81 **Commissioners in attendance: 9 of 9**

82 **Members in the public in attendance: 16**

83 **Public Speakers: 12 speakers**

84 **Length of the meeting: 2 hour and 49 minutes**



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 16, 2018

TO: Members of the Planning Commission

FROM: Sydney Stephenson, Assistant Planner

SUBJECT: Public Hearing to Consider an Urban Agriculture Ordinance (BMC 23C.26) and Related Amendments

SUMMARY

The draft Urban Agriculture Ordinance (Section 23C.26) responds to two City Council referrals that concern the related topics of Urban Agriculture (UA) and Community Gardens (CG). This report responds to the two referrals by creating a new zoning land use category of Urban Agriculture and setting thresholds for levels of intensity and permitting. This approach requires establishing new definitions, a new Zoning Ordinance chapter, and modifications to the *Uses Permitted Tables* throughout the Zoning Ordinance. Planning Commission discussed this approach and requested a May 16, 2018 Public Hearing on Urban Agriculture Zoning Ordinance amendments (see Attachment 1: Public Hearing Notice on Urban Agriculture).

BACKGROUND

On March 21, 2018, staff proposed the approach of combining the two Council referrals regarding UA and CG. See Attachment 2 and 3 for the Council referrals and Link 1 for the prior staff report. This approach was arrived at through consultation with the UA/CG advocacy community and other experts in the field. At the previous Commission meeting, staff proposed creating a new zoning land use category of Urban Agriculture and setting thresholds for levels of intensity and permitting. The Planning Commission requested more permissive thresholds and lower levels of discretion for the proposed uses.

There are three Zoning Ordinance amendments to be considered to enact the new zoning land use classification of Urban Agriculture:

1. Adopt Urban Agriculture Definitions: Create new definitions for Urban Agriculture and Urban Agricultural Products in Berkeley Municipal Code (BMC) Chapter 23F.04 (Definitions).

2. Adopt new Chapter 23C.26 (Urban Agriculture): Create specific thresholds and operation standards to control potential impacts of the new Urban Agriculture use.
3. Modify the *Uses Permitted Tables* to add Urban Agriculture: Add Urban Agriculture use and level of discretion to the *Uses Permitted Table* of each applicable Zoning District. Modify the *Uses Permitted Table* of each applicable Zoning District to allow accessory buildings and structures with a Zoning Certificate on a vacant lots with Urban Agriculture.

The purpose of the new Zoning Ordinance Chapter 23C.26 (Urban Agriculture) is to create a new zoning land use category of Urban Agriculture and set thresholds for levels of intensity and permitting. Urban agriculture would include low-intensity (e.g. community gardens) and high-intensity uses (e.g. high production urban farm). The intensity of the Urban Agriculture use and level of discretion will be determined by five thresholds for: parcel size, lot coverage, hours of operation, group classes, and pesticide use. This draft Ordinance does not apply to cannabis cultivation, which is addressed through different regulations.

DISCUSSION

Draft Zoning Ordinance amendments can be found in Attachment 4 (*Zoning Ordinance language Adopt Chapter 23C.26: Urban Agriculture*), Attachment 5 (*Zoning Ordinance Amendments to Modify Uses Permitted Tables*) and Attachment 6 (*Zoning Amendments to Adopt Urban Agriculture Definitions in Chapter 23F.04*). Amendments create a new standalone Urban Agriculture Chapter in the Zoning Ordinance, modify the Uses Permitted Tables in the applicable Zoning District chapters, and add new definitions to Chapter 23F.04 (Definitions).

Urban Agriculture Ordinance (BMC 23C.26) Content:

The new Urban Agriculture Ordinance will apply to all districts and therefore be a separate chapter of Sub-Title 23C, (General Provisions Applicable in All Districts), since direction from the Planning Commission and Council referrals is to allow in all districts. This chapter will include the specific regulations and thresholds for regulating the Urban Agriculture land use. The draft UA ordinance is informed by evaluating other cities' regulations on Urban Agriculture, input from local organizations, and guidance from the Planning Commission. Below is a description of the content included in the Urban Agriculture chapter and its location.

Purpose: The Purpose section of the Urban Agriculture Ordinance includes three purposes and benefits gathered from the Council referrals and the Climate Action Plan.

Applicability: The Applicability section of this proposed ordinance includes reference to the definition of Urban Agriculture (BMC Chapter 23F.04), the Districts Urban Agriculture use is allowed, and the limitation to only parcels with active uses or businesses.

The Urban Agriculture use will be defined in BMC Chapter 23F.04 (Definitions). UA is intended as the primary use of otherwise undeveloped parcels, and not as an incidental use.

Urban Agriculture Uses and Levels of Discretion: This section of the chapter describes the two levels of intensity for Urban Agriculture and the levels of discretion required. Staff determined that different intensity levels of the use would have different affects and compatibility in each district. For example, small community gardens are anticipated to be more compatible in low-density residential districts because they have less potential impacts than large-scale farms. Thus, staff recommends separating the Urban Agriculture use by level of intensity into two subcategories:

- **Low-Intensity Urban Agriculture (LIUA)** meets all of the base thresholds. The base thresholds that differentiate between LIUA and HIUA are discussed in the below in the Thresholds section of the chapter. The base thresholds will minimize potential impacts from this use, thus LIUA requires lower levels of discretion. At the previous Planning Commission meeting, staff proposed requiring an Administrative Use Permit (AUP) for LIUA in low-intensity residential districts (R-1, R-1A, R-2, R-2A, and R-3) and a Zoning Certificate for LIUA in high-intensity residential districts (R-4, R-5, R-S, and R-SMU), all commercial districts, and all manufacturing districts. However, the Planning Commission directed staff to lower the level of discretion in the low-intensity residential districts to a Zoning Certificate to match the rest of the Zoning districts. Thus, the proposed chapter (Attachment X) allows LIUA with a Zoning Certificate in all applicable districts. An example of LIUA is a community garden that meets all the base thresholds and requirements for LIUA.
- **High-Intensity Urban Agriculture (HIUA)** does not meet one of the base thresholds for LIUA. The higher intensity of the use will create more potential impacts and should require higher levels of discretion to provide opportunities for community input. At the previous Planning Commission meeting, staff proposed requiring a Use Permit with a Public Hearing (UP(PH)) for HIUA in low-intensity residential districts (R-1, R-1A, R-2, R-2A, and R-3) and an AUP for HIUA in high-intensity residential districts (R-4, R-5, R-S, and R-SMU), all commercial districts, and all manufacturing districts. However, the Planning Commission directed staff to lower the level of discretion in the low-intensity residential districts to an AUP to match the rest of the Zoning districts. Thus, the proposed chapter (Attachment X) allows HIUA with an AUP in all applicable districts. An example of HIUA is a large-scale, high-production urban farm that does not meet the thresholds of LIUA.

Thresholds: LIUA and HIUA thresholds are intended to address the potential for community concern about various aspects of the UA use. As described above, the differentiation between LIUA and HIUA Urban Agriculture use is determined by base thresholds, including: parcel size, lot coverage, hours of operation, group classes and workshops, and pesticide use. Previously, staff proposed including retail sales as a threshold, but the Planning Commission directed to allow retail sales for all Urban Agriculture uses and to not include as a threshold. Thus, staff included reference to retail sales requirement in the Operation Standards section of this report. The five Threshold are discussed below.

- **Parcel Size:** Staff believes that the size of the parcel will contribute to the potential impacts. Therefore, staff recommends using parcel size to distinguish between LIUA and HIUA. Previously, staff recommended a parcel size threshold of 5,000 square feet. Following the last Planning Commission meeting, staff researched the average size of the vacant parcels the City of Berkeley. The average parcel size of vacant residential parcel in Berkeley is 7,500 sq. ft. Thus, staff recommends a parcel size threshold of 7,500 sq. ft.
- **Lot Coverage:** Existing community gardens contain accessory structures including tool sheds, greenhouses, fences, and shading roofs. Thus, staff expects new Urban Agriculture uses, like community gardens, to build accessory structures. All Residential districts include a maximum lot coverage requirement which includes accessory buildings and structures. The average lot coverage requirement in these districts is 40%. Urban Agriculture uses are expected to be on vacant parcels, and staff believes since the primary use will be producing crops and food outdoors, 40% lot coverage is too high. Staff originally proposed reducing maximum lot coverage to 10% for accessory buildings and structures on Urban Agriculture parcels. However, after the Planning Commission discussion and research of existing community gardens, staff proposes a lot coverage threshold of 20%.
- **Hours of Operation:** The *Exempted Accessory Uses* chapter allows hours of operation from 8am to 8pm, seven days a week. Thus, staff recommends following the same direction and retain the same hours of operations as a threshold.
- **Group Classes and Workshops:** Staff met with community gardens organizations and discussed the activities at existing community gardens, including educational classes. Therefore, staff anticipates Urban Agriculture uses to include activities like group classes and workshops. Previously, staff recommended a threshold of activities held two times per week with a maximum of 15 participants to limit the potential noise and parking impacts. However, following the Planning Commission's discussion, staff now proposes three times a week with 20 participants to align more with activities at existing community gardens.
- **Pesticide Use:** At the previous Planning Commission meeting, the Commission directed staff to add pesticide use as a threshold. State law (California Food and Agricultural Code Section 11501.1) does not allow local governments to prohibit the use of pesticides (see Attachment 7). While the City cannot ban or regulate use of pesticides, the threshold provides an opportunity for public notification participation and encouragement of less toxic means.

Operation Standards: The Operating Standards section includes requirements for growing the crops, retail sales, health safety, garbage and compost, and equipment. The retail requirements are similar to BMC Section 23C.20.010.B (*Exempted Accessory Uses*) requirements for Non-Processed Edibles. The requirements for garbage and equipment were gathered from other cities including Sacramento and San Francisco.

Complaints: Complaints regarding the uses and activities associated with the Urban Agriculture use will be subject to the Zoning Ordinance Abatement of Nuisances Chapter (23B.64) and the BMC Health and Safety Chapter on Anti-blight. All complaints shall be made to Code Enforcement.

New Urban Agriculture Definitions:

Currently, there are no definitions for farms, community gardens, or any use related Urban Agriculture in the Zoning Ordinance (BMC Chapter 23F.04). Thus, a new definition for Urban Agriculture is needed. The proposed definition is:

Urban Agriculture: the production of horticultural crops¹ for harvest, sale, and/or donation, including community gardens. Urban Agriculture does not include cannabis cultivation.

In addition, the proposed Chapter 23C.23 (Urban Agriculture) references the products from Urban Agriculture uses as Urban Agricultural Products. UA products allowed for sale include raw agricultural products as well as value-added products to the definition of Urban Agricultural Products:

Urban Agricultural Products: Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban Agricultural Products do not include cannabis products.

Modify the Uses Permitted Tables for Urban Agriculture:

Urban Agriculture is a new use permitted throughout the City of Berkeley. Therefore it needs to be added to each district's *Uses Permitted Table*. An example of language for the *Uses Permitted Table* is shown below.

Use	Classification	Special Requirements
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	

In addition, staff is recommending Urban Agriculture be allowed on vacant parcels (without main buildings). Currently, *Uses Permitted Table* for each Zoning district includes language requiring an Administrative Use Permit (AUP) for accessory buildings and structures located on vacant parcels. Thus, staff recommends amending this language to provide an exception to Urban Agriculture. The accessory buildings or structures must comply with the Accessory Buildings and Structures chapter (BMC Chapter 23D.08) as well. See the example language below.

¹ The [Encyclopedia Britannica](#), defines Horticulture as: “the branch of plant agriculture dealing with garden crops, generally fruits, vegetables, and ornamental plants.”

Use	Classification	Special Requirements
Accessory Buildings or Structures with Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.080.060.

ENVIRONMENTAL REVIEW

The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). The proposed amendments allow Urban Agriculture in all Zoning Districts (except ES-R) with specific thresholds for intensity of use. These thresholds ensure that there would not be significant effects on the environment. Any project generating an intensity beyond the threshold would require discretionary review and would be subject to independent CEQA analysis.

CONCLUSION:

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and provide a recommendation to the Council with any modifications on draft Urban Agriculture Ordinance and draft Zoning Ordinance amendments through a vote of the Planning Commission.

ATTACHMENTS

1. Public Hearing Notice on Urban Agriculture
2. Urban Agriculture Council Referral – November 29, 2016
3. Community Garden Zoning Council Referral – May 10, 2016
4. Zoning Ordinance language Adopt Chapter 23C.26: Urban Agriculture
5. Zoning Ordinance Amendments to Modify Uses Permitted Tables
6. Zoning Amendments to Adopt Urban Agriculture Definitions in Chapter 23F.04
7. State Law on Pesticide Regulations – Email from Christina Oatfield

LINKS

1. [March 21, 2018 Planning Commission Staff Report](#)



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

MAY 16, 2018

Consider an Ordinance to Allow Urban Agriculture

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, May 16, 2018**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: Urban Agriculture is the production of horticultural crops for harvest, sale, and/or donation, including community gardens. The propose of the new Zoning Ordinance Chapter 23C.26 (Urban Agriculture) is to create a new zoning land use category of urban agriculture and set thresholds for levels of intensity and permitting. Urban agriculture would include low-intensity (e.g. community gardens) and high-intensity uses (e.g. high production urban farm). The intensity of the urban agriculture use and level of discretion will be determined by five thresholds for: parcel size, lot coverage, hours of operation, group classes, and pesticide use. This draft Ordinance does not apply to cannabis cultivation, which is addressed though different regulations. There are three changes that need to be considered to enact the new zoning land use classification of Urban Agriculture:

1. Adopt Urban Agriculture Definition
Create new definition for urban agriculture in Berkeley Municipal Code (BMC) Chapter 23F.04 (Definitions).
2. Adopt new Chapter 23C.26 (Urban Agriculture)
Create specific thresholds and operation standards to control potential impacts of the new urban agriculture use.
3. Modify the *Uses Permitted Table* for Urban Agriculture
Add urban agriculture use and level of discretion to the *Uses Permitted Table* of each applicable Zoning District. Modify the *Uses Permitted Table* of each applicable Zoning District to allow accessory buildings and structures with a Zoning Certificate on a vacant lots with urban agriculture.

LOCATION: The proposed Ordinance would apply to all Zoning Districts except Environmental Safety-Residential District (ES-R). The zoning map is available online:

http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that the proposed amendments to add Urban Agriculture in all Zoning District (except ES-R) with specific thresholds would not have significant effects on the environment because any proposed discretionary project would be subject to independent CEQA review.

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments concerning this project should be directed to:

Planning Commission
Alex Amoroso, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7520
E-mail: aamoroso@ci.berkeley.ca.us

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5" x11" inches.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

FURTHER INFORMATION

Questions should be directed to **Alex Amoroso**, at (510) 981-7520, or aamoroso@ci.berkeley.ca.us. Past and future agendas are also available on the Internet at: www.ci.berkeley.ca.us.



Jesse Arreguín
City Councilmember, District 4

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CONSENT CALENDAR
November 29, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Urban Agriculture Package

RECOMMENDATIONS

Refer to the Planning Commission to develop regulations to facilitate urban agriculture, taking into consideration the following concepts:

1. Designate “urban agriculture” as a primary and incidental use category and define as, “the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis”.
2. Add urban agriculture as an Outdoor Use in all Commercial zones.
3. Permit urban agriculture on unoccupied lots in residential zones.
4. Consider whether to permit urban agriculture in lots in the Hillside Overlay, and whether to permit urban agriculture on lots of a certain slope or requiring a geotechnical study.
5. Define rooftop gardens and develop requirements that comply with existing building codes.
6. Permit accessory uses, including sheds, greenhouses, trellises, pergolas and fences on occupied and vacant lots used for urban agriculture.
7. Permit group class instruction, community gatherings, and sales as an accessory use in commercial and residential zones and establish conditions for these uses in residential zones based on the requirements in Section 23C.20.010 (B), Sales of Non-Processed Edibles.
8. Permit sales of “value-added” products or processed food products to be sold on site during the sales of non-processed edibles or plants, in compliance with the State of California Homemade Food Act.
9. Consider the levels of discretion (permits required) for these various uses.

BACKGROUND

The popularity of urban agriculture has grown rapidly in recent years. To meet this renewed interest, cities across the country have developed policies to support and encourage a variety of uses. From residential and community gardens, to urban farms,

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Referral to Planning Commission: Urban Agriculture

CONSENT CALENDAR
November 29, 2016

urban agriculture is not only providing healthy food to communities, but it is also developing into a mature business sector that helps local economies thrive. In 2014, U.S. local food sales totaled at least \$12 billion, up from \$5 billion in 2008, with experts anticipating that value hitting \$20 billion by 2019. The expansion of urban agriculture is also driving the growth of green jobs and increasing entrepreneurship.

Urban agriculture also improves the environment by reducing the distance food must travel to our plates, which in turn reduces greenhouse gas (GHG) emissions, something the people of Berkeley care about deeply. In 2006, Berkeley voters overwhelmingly endorsed Measure G, making it a goal for our City to reach an 80% reduction in GHG emissions by 2050. In 2009, the Climate Action Plan (CAP) reiterated this sentiment in its Vision for 2050 and asserted that an important way to meet this goal would be to locally produce the majority of food consumed in Berkeley. The CAP states that, "In response to crises like climate change, Peak Oil, health disparities, a shaky economy, and the loss of greenfields and farmland due to suburban sprawl, the City and its partners must do more to build a resilient and sustainable local food system". Policy C of Goal 2 in the Sustainable Transportation and Land Use section recommends "supporting efforts to build a more complete and local food production and distribution systems".

In July of 2012, the Berkeley City Council amended the Zoning Ordinance to exempt the limited sales of "non-processed edibles" (i.e. fresh produce, eggs) in residential districts. The amendment created guidelines for the sale of produce and homegrown goods, and made urban agriculture and limited sales on occupied lots an exempt zoning use. It also enabled small-scale Community Supported Agriculture (CSA) in residential areas. While this legislation was an important first step, it did not cover Berkeley's commercial districts, nor did it permit urban agriculture in unoccupied residential lots. Currently, urban agriculture is only allowed in three zoning districts, Residential, Manufacturing (M), and Mixed Manufacturing (MM) Districts, and is prohibited in all other areas.

The lack of definitions or permitted uses for either "urban agriculture" or "community garden" has made existing urban farms and community gardens in most zones technically illegal. On May 10, 2016, the City Council passed an item on consent referring to the Planning commission to: 1) define community gardens in the Zoning Ordinance, and 2) permit group class instruction, gatherings, and sales as exempt accessory uses. However, a definition of urban agriculture and uses, and permit guidelines by zone are still needed.

Urban agriculture is a valuable asset for our City because it helps strengthen the health and social fabric of communities while creating economic opportunities for farmers and neighborhoods. To increase these opportunities and improve the environment by meeting our GHG emission reduction goals, we must update our Zoning Ordinance to include the following on urban agriculture:

Page 3 of 5

Referral to Planning Commission: Urban Agriculture

CONSENT CALENDAR
November 29, 2016

Use Designation and Definition

Designating urban agriculture as a primary and incidental use category in every zone is an important foundational step to support a diversity of uses, food security, and our local economy. Similar to San Francisco, Sacramento, and Oakland, we should designate urban agriculture a use category defined as, *“the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis”*.

Urban Agriculture in Commercial Zones

By expanding uses to Commercial zones we can maximize urban agriculture opportunities in Berkeley, getting closer to Policy C, Goal 2 of the Climate Action Plan – a more complete and local food production and distribution system. As part of this referral the Planning Commission will consider the appropriate levels of discretion for these uses.

While there are no set standards for urban agriculture soils at either the Federal or State levels, the Federal Environmental Protection Agency has set a lead level of 400ppm that is widely accepted for soils. Agencies like the California Department of Health and the Berkeley Unified School District adhere to this standard as well. While testing is commonly not required, it is recommended, as is following the Starting Your Own Urban Garden guidelines set forth by the Community Environmental Advisory Commission in March, 2015.

Urban Agriculture on Unoccupied Lots in Residential Zones

Urban agriculture and limited sales on occupied lots in residential zones are currently exempt zoning uses. However, these exemptions do not apply to unoccupied residential lots. Permitting urban agriculture on residential unoccupied lots will remove existing barriers and make it easier for non-profit organizations, schools, or community groups to more easily start a garden.

Due to concerns over the potential for landslides and proximity to the Hayward Fault, the Planning Commission should consider whether to permit urban agriculture on unoccupied lots in the Hillside Overlay zone and whether to require a geotechnical study. An alternative approach suggested by the Planning Director is to allow urban agriculture on hillside lots of a certain slope.

Rooftop Gardens

Rooftop gardens are an excellent way to increase urban agriculture in a city while reducing building energy usage and improving habitat corridors. Cities across the country like New York, Portland, and San Francisco have embraced this use. In addition, the Climate Action Plan explicitly points out that we should, “encourage and provide guidelines consistent with the building code for buildings to incorporate rooftop gardens that can be used for food production.” There are two types of rooftop gardens:

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Referral to Planning Commission: Urban Agriculture

CONSENT CALENDAR
November 29, 2016

- **Extensive Green Roof:** Plants are grown directly on the roof in four to six feet of substrate, covering most, if not all, of the surface. Water retention and insulation are the main goals of this type of rooftop garden. Since these typically involve minimal traffic and maintenance, they are considered “unoccupied” and are often treated as Alternative Roofing Surfaces for the purposes of most regulations.
- **Intensive Green Roof:** Larger plants are grown as ornamentals or edibles. Because these gardens require more substantial planting depths, as well as regular maintenance, the rooftops on which they are sited are considered “occupied” and will be subject to more stringent regulations. Since there is little precedent and no specific mention of roof gardens in the planning and building codes, these setups will mostly be treated as Roof Decks.

Expansion of Exempt Accessory Uses

Although the City Council passed an item on May 10, 2016 that permitted group class instruction, gatherings, and sales as exempt accessory uses, this only applies to community gardens. By expanding these accessory uses to all urban agriculture uses and including accessory structures like sheds, trellises and greenhouses, which all currently require additional permits, we can continue to support local food production by reducing permitting cost and time barriers. As part of this referral the Planning Commission will consider the appropriate levels of discretion for these uses.

Sales in Commercial Zone and Value-Added Products

Similar to what was put forth in Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts), if a lot is being used for urban agriculture, incidental sales of goods manufactured on site should be an exempt accessory use requiring only a zoning certificate.

In 2013, Assembly Bill 1616, the California Homemade Food Act was signed into law. The bill allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens, referred to as “cottage food operations” (CFOs). As part of the act, a two-tier operator registration and permitting system was created. Class A CFOs are those that sell prepared foods directly to the public on-site or at a community event. This tier must submit a registration application and self-certification checklist for approval. Class B CFOs are those that sell prepared foods either indirectly through restaurants and stores or both directly to the public as well as indirectly. This tier must submit a permit application and be inspected prior to being approved. All CFOs must be registered or permitted by their local or county environmental health agency before they can begin business.

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Referral to Planning Commission: Urban Agriculture

CONSENT CALENDAR
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If an individual or organization is in compliance with the Homemade Food Act, a registered or permitted CFO, and is meeting all the requirements within the BMC regarding hours and visitors for on-site sales in their zone, they should be able to sell value-added or prepared products along with unprocessed foods, such as produce or plants.

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

Increasing the opportunities for urban agriculture will create more green space, increase access to fresh produce, bolster the local economy, and potentially reduce greenhouse gas emissions from food transport, which would help us meet Vision 2050 and Climate Action Plan goals.

CONTACT PERSON

Jesse Arreguín, Councilmember, District 4 510-981-7140

1 of 4



Jesse Arreguín
City Councilmember, District 4

Item 11 - Attachment 2
Planning Commission
March 21, 2018

ACTION CALENDAR
May 10, 2016

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Referral to Planning Commission: Community Garden Zoning

RECOMMENDATIONS

Refer to the Planning Commission the following amendments to the Zoning Ordinance to define Community Gardens and permit them in all zoning districts:

1. Add the following language to Section 23F.04.010 (Definitions) to define Community Gardens as a new zoning use:

Community Garden: Any piece of land, public or private, that is maintained by a group of individuals in the community that is used for the cultivation of fruits, vegetables, plants, flowers, herbs or ornamental plants, and may be used for educational purposes, group class instruction or community gatherings. Community gardens may produce food for individual consumption, donation, trade or limited seasonal sales as an exempt accessory activity subject to certain limitations. Community gardens may also have accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises by right with a Zoning Certificate.

2. Establish community gardens and accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises as a “by right” use in all zoning districts requiring only a Zoning Certificate.
3. Permit group class instruction, community gatherings, and sales as an exempt accessory use subject to limitations on the number of persons, hours, similar to the requirements set forth in BMC Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts).

BACKGROUND

Community gardens have been an important part of our city's urban life for decades. Going as far back as World War II when residents cultivated "victory gardens" to grow food during the war-time economy, Berkeley has nurtured a number of community gardens over the years, providing recreation and locally grown organic food. There are currently over thirty community gardens throughout the city, six of which are operated on public land and overseen by the Parks, Recreation and Waterfront Department in partnership with the Berkeley Community Gardening Collaborative.

While Berkeley has allowed community gardens on public and private land, currently they are not a permitted zoning use. This makes existing community gardens a non-conforming use, and creates barriers for the formation of new gardens. In addition, many of the accessory uses that community gardens need such as group class instruction, sales of produce or plants and accessory structures, require separate zoning permits. These separate permits cost time and money for non-profit, volunteer-run community gardens.

The 2002 General Plan recognized the growing need for additional community gardening sites, and stated in Policy OS-8 that we must "*encourage and support community gardens as important open space resources that build communities and provide a local food source.*" The 2009 Berkeley Climate Action Plan (CAP) went a step further and strongly advocated for community gardens as a way to encourage the consumption of local food in order to strengthen local food security, and reduce food miles and fossil fuel consumption. Additionally, the CAP aimed to support existing community gardens as well as neighborhood initiatives to launch additional community gardens.

In July 2012, the Berkeley City Council amended the zoning ordinance to exempt the sales of "non-processed edibles" (i.e. fresh produce, eggs) in residential districts. This was in response to strong community support for reducing permitting barriers to urban farming. While this legislation was an important step, it did not cover Berkeley's commercial and manufacturing districts. Currently, urban agriculture is only allowed in one zoning district, the Manufacturing (M) District in West Berkeley and prohibited in all other areas. The lack of a permitted use for either "urban agriculture" or "community gardens" has made existing community gardens technically illegal because they do not have the proper permits.

3 of 4

Referral to Planning Commission: Community Garden Zoning

ACTION CALENDAR
May 10, 2016

The cost of starting a community garden varies depending on size, complexity and materials. According to the Ecology Center's Community Garden Handbook, materials alone - including water hookup, mulch, storage, fence, etc. - can add up to more than \$23,000. This estimate does not include securing the necessary permits, which can cost thousands of dollars and take several months. Easing the permitting cost by changing the use to "by right" with a Zoning Certificate would remove a huge barrier for potential gardening groups, schools and non-profit organizations, reducing the cost and time needed to start a community garden. Doing so can also help address existing "food deserts" in our city, parts of our community that do not have easy access to fresh local produce.

Community gardens are a valuable asset for our city because they increase access to healthy, affordable, culturally appropriate food for the people of Berkeley. They encourage urban agriculture, the preservation of open space, habitat restoration and the cultivation of community. The proposed amendments will make it possible for Berkeley's growing community garden network to flourish.

FINANCIAL IMPLICATIONS

Staff time to draft zoning amendments. Community Gardens would be exempt from zoning review and therefore would not result in fiscal impacts on the Land Use Planning Division.

ENVIRONMENTAL SUSTAINABILITY

Permitting community gardens by right will advance General Plan and Climate Action goals, and may encourage people to convert vacant land to agricultural use. Additional agricultural uses would create more green space, increase access to fresh produce, and potentially reduce greenhouse gas emissions from food transport.

CONTACT PERSON

Jesse Arreguín, Councilmember, District 4 510-981-7140

36b. Companion Report: Healthy Default Beverages with Children's Meals

From: City Manager

Recommendation: Direct the City Manager to develop specific ordinance language, prepared in consultation with the City Attorney's Office that requires food vendors who offer children's meals to provide healthy default beverages, and a cost estimate for implementation for Council's consideration.

Financial Implications: See report

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400

Action: Item 36b moved to Consent Calendar. Revised to include the direction that the commission recommendation be used as guidance for staff and that the process be complaint driven.

Council Action Items

37. Referral to Planning Commission: Community Garden Zoning

From: Councilmember Arreguin

Recommendation: Refer to the Planning Commission the following amendments to the Zoning Ordinance to define Community Gardens and permit them in all zoning districts: 1. Add language to Section 23F.04.010 (Definitions) to define Community Gardens as a new zoning use. 2. Establish community gardens and accessory structures including, but not limited to tool sheds, greenhouses, pergolas and trellises as a "by right" use in all zoning districts requiring only a Zoning Certificate. 3. Permit group class instruction, community gatherings, and sales as an exempt accessory use subject to limitations on the number of persons, hours, similar to the requirements set forth in BMC Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts).

Financial Implications: Staff time

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

Action: Moved to Consent Calendar. Revised to include requests to consider limiting the size of the accessory structure, requiring and AUP, and impacts of Measure L.

34 C. Hours of operation is 8:00 a.m. and 8:00 p.m., including but not limited to activities
35 related to gardening and planting of horticultural crops, group classes, and sales.

36 D. Maximum group classes and workshops of 20 participants per class conducted no
37 more than three times per week.

38 E. Any Urban Agriculture use that uses non-organic pesticides must obtain an
39 Administrative Use Permit.

40 **23C.26.050 Operation Standards**

41 A. The growing, production, or sale of Urban Agricultural Products do not involve
42 hazardous materials or processes or create offensive or objectionable noise,
43 vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond
44 the lot line of the subject lot.

45 B. Sales and/or donations of Urban Agricultural Products grown and produced on-site
46 are permitted.

47 C. If selling or donating Urban Agricultural Products to the public, the Urban Agriculture
48 use shall comply with all applicable food safety laws, including the California Health
49 and Safety Code.

50 D. Garbage and compost receptacles must be screened from the street and adjacent
51 properties by utilizing landscaping, fencing or storage structures and all garbage
52 shall be removed from the site weekly. Compost piles and containers must be set
53 back at least 10 feet from residential buildings when an Urban Agriculture use abuts
54 a residential use.

55 E. Use of mechanized farm equipment is prohibited in residential districts and when the
56 Urban Agriculture use abuts a residential use, with the following exceptions:

- 57 1. Heavy equipment may be used initially to prepare the land for agriculture use.
58 2. Landscaping equipment designed for household use is permitted.
59 3. Equipment when not in use must be enclosed or otherwise screened from
60 sight.

61 **23C.26.060 Complaints**

62 Uses, activities or events associated with Urban Agriculture are subject to Chapters
63 23B.64 and 12.92 if found to be non-compliant with the provisions set forth in this
64 chapter.

**EXAMPLE CODE REFERENCE UPDATE:
 Updating code references in applicable “Permitted Uses” tables in Districts where
 Urban Agriculture will be Permitted**

The following table excerpts is an example of what needs to be updated from the R-1 chapter of the Zoning Ordinance. This same update is necessary in R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU Chapters.

Table 23D.16.030		
Uses and Required Permits		
Use	Classification	Special Requirements (if any)
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08 .
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	

Table 23D.16.030		
Uses and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.080.060.

The following table excerpts is an example of what needs to be updated from the C-1 chapter of the Zoning Ordinance. This same update is necessary in C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, M, MM, MU-LI, and MU-R Chapters.

Table 23E.36.030			
Uses and Required Permits			
Use	Classification	Special Requirements (if any)	
Parking, Outdoor and Exterior Service Window Uses			
Activities or Storage Outside of a building not ancillary to a permitted use	ZC	AUP	Not permitted abutting R-District
Automatic Teller Machines	AUP		
Drive-in uses, which provide service to customers in their cars	Prohibited		
Farms and other Agricultural Uses, including Composting	AUP	UP	-
Urban Agriculture			Subject to 23C.26
Low-Impact Urban Agriculture (LIUA)	ZC		
High-Impact Urban Agriculture (HIUA)	AUP		

Table 23E.36.030			
Uses and Required Permits			
Use	Classification	Special Requirements (if any)	
Residential and Related Uses			
All other uses permitted in residential Districts including dwelling units	Prohibited		
Child Care Centers	Prohibited		
Clubs, Lodges for persons working in the District	UP(PH)		
Public Safety and Emergency Services	UP(PH)		

Public Utility Substations, Buildings and Tanks	UP(PH)	
Religious Assembly Uses	Prohibited	
Schools, Public or Private and other Educational Institutions	Prohibited	
Accessory Buildings or Structures with Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.080.060.

23F.04 DEFINITIONS:

Urban Agriculture: The production of horticultural crops for harvest, sale, and/or donation, including community gardens. Urban Agriculture does not include cannabis cultivation.

Urban Agricultural Products: Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban Agricultural Products do not include cannabis products.

Stephenson, Sydney

From: Christina Oatfield <christina@theselc.org>
Sent: Wednesday, March 21, 2018 9:08 PM
To: Amoroso, Alexander; Stephenson, Sydney
Subject: State law on pesticide regulation

Hi Alex and Sydney,

The relevant section of CA law regarding pesticide regulation is **California Food and Agricultural Code Section 11501.1** which says this:

(a) This division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect.

(b) If the director determines that an ordinance or regulation, on its face or in its application, is preempted by subdivision (a), the director shall notify the promulgating entity that it is preempted by state law. If the entity does not repeal its ordinance or regulation, the director shall maintain an action for declaratory relief to have the ordinance or regulation declared void and of no force or effect, and shall also bring an action to enjoin enforcement of the ordinance or regulation.

(c) Neither this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.

(d) At the request of any state agency disseminating information on the pesticidal uses of any product, the director shall consult with, and provide technical assistance to, that agency to ensure that the dissemination is based on valid scientific information and consistent with state law.

Assemblymember Fiona Ma tried to overturn this law with [AB 977 in 2008](#) to return control of pesticide regulation to local governments. It did not succeed.

It would be cool if the city of Berkeley would get behind another attempt to change that law!

Best,

Christina

--

Christina Oatfield
Policy Director
Sustainable Economies Law Center | www.theSELC.org

(415) 828-5627 (mobile)
christina@theseic.org

Item 9 - Attachment 7
Planning Commission
May 16, 2018

Legal education, research, advice, and advocacy for just and resilient economies.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 16, 2018
TO: Members of the Planning Commission
FROM: Elizabeth Greene, Senior Planner
SUBJECT: Council Referral Regarding Cannabis and Existing Nurseries

INTRODUCTION

On July 25, 2017, City Council adopted a recommendation that the Planning Commission and Cannabis Commission create an ordinance to clarify City policy on cannabis and existing (non-cannabis) nurseries. The City Council also raised this issue at a March 20, 2018, Work Session focused on draft regulations for cannabis businesses.

The underlying question is whether existing conventional non-cannabis nurseries should be allowed to grow and sell immature cannabis plants and seeds on a retail basis. State license requirements as well as City and State regulations would apply.

The purpose of this report is not to provide a specific recommendation as of yet, but to begin to discuss the potential implications of allowing existing nurseries to combine cannabis and non-cannabis sales.

In the meantime, staff is working to further develop other components of regulations for cannabis businesses based on City Council input at the March 20, 2018 Work Session. City Council requested a second Work Session on cannabis regulations in the Fall 2018.

BACKGROUND

The passage of Proposition 64 in November 2016 allows the production, processing, distribution, testing and sale of adult use (non-medical) cannabis. The State has developed 27 different license types that cover all aspects of the industry supply chain, and established regulations and licensing to control how these businesses operate.

The land use regulations for these uses are the responsibility of each local jurisdiction. The City currently has regulations in place for medicinal cannabis retail, cultivation, manufacturing and testing uses in line with the former State standards. City staff is working with city commissions and community stakeholders to develop regulations for

new uses and modify existing regulations to conform to the new state laws. Based on feedback from the Council at a March 20, 2018 work session, much of the new ordinance language will require additional public consideration and may not be ready for adoption until the end of 2018 or beyond.

On July 25, 2017, the City Council asked the Cannabis Commission and Planning Commission to clarify city policy on cannabis and existing nurseries (see Attachment A). State law would allow licensed cultivation facilities to grow both medicinal and adult use cannabis on a wholesale basis. Cannabis Nursery uses as a wholesale cultivation use were considered as part of the larger cannabis ordinance review, and are included as an allowed use in the M District. Cannabis Nurseries with a retail component, and the use of existing conventional nursery sites for that purpose, were not specifically included in the discussion.

DISCUSSION

The goal of the Council referral is to have the Commissions consider whether or not existing conventional non-cannabis nurseries in Berkeley, such as Berkeley Horticultural and East Bay Nursery, should be allowed to have the option to grow and sell retail Cannabis plant starts/clones. Staff has identified existing retail nurseries on the map (Attachment B), which also identifies surrounding zoning designations (residential, commercial and manufacturing). This discussion explores this question in the context of State Cannabis license requirements, local Cannabis regulations and considerations, and local land use considerations.

In order for a conventional nursery to grow and sell cannabis plants and seeds, the City must answer two primary questions:

1. How would this use conform to State licensing requirements? The State has indicated that Cannabis Nurseries selling clones and seeds on a retail basis to the public would require licenses for Retail, Cultivation and Distribution. It is unclear whether non-cannabis products could be sold alongside cannabis products.
2. Would a cannabis nursery compliant with State requirements operate in the same manner as a conventional non-cannabis nursery? Should they be considered similar uses?

Considerations and Analysis

The Planning Commission should focus on three primary topics as it begins to evaluate whether the City should permit cannabis uses to establish at existing nurseries: location of existing nurseries; conformity with State regulations; and conformity with existing and potential local cannabis regulations. A brief description of these topics and issues considered by staff follows.

Location of existing nurseries. Local regulations for cannabis cultivators and nurseries are still being developed. The State law considers Cannabis Nurseries

a type of cultivation use, and the existing City of Berkeley cannabis ordinances would regulate Cannabis Nurseries in the same manner as other Cultivation businesses. They would be limited to the Manufacturing (M) district, and all growing would be restricted to indoors or greenhouses. Cultivators would be subject to operating standards including security requirements such as guards, 24-hour cameras, and on-site lighting to protect the premises from theft. Commercial cannabis cultivation in Berkeley is capped at 180,000 square-feet of canopy. Some of these regulations have not been approved by the Council and are still subject to change.

Staff has identified eight existing non-cannabis nurseries in Berkeley (not including businesses which may have a nursery component, such as grocery stores, hardware stores or pharmacies). Of these, half are considered non-conforming uses because they are located either partially or completely in residential districts. See Attachment B for a map of these uses.

Conformity with State Regulations. Per State law, any business involved in the production, testing, distribution and/or sale of cannabis in any form or amount, requires approvals from two jurisdictions: the State and the local jurisdiction in which it is located.

The State has 17 different cultivation license types. Cannabis Nurseries (CN) are one of these license types. CN are different from other cultivation uses in that they produce starter plants (clones) and seeds but not the buds that are used in cannabis products. All cultivators, including CNs, can only sell product on a wholesale basis to other state licensed businesses. State law currently only allows one license type, Retailer, to sell products on a retail basis. Usually, clones and seeds are sold by CNs to Retailers for sales to the public, or to other Cultivators to be grown to maturity and harvest. Members of the public wishing to grow cannabis at home must buy their plants or seeds from a cannabis Retailer.

According to the State, a CN selling product on a retail basis would need three types of cannabis licenses at the proposed site:

1. Cannabis Nursery license (separate premises, no public access)
2. Cannabis Retailer license (separate premises, public access only for persons over 21)
3. Cannabis Distributor (separate premises may not be necessary)

If an existing nursery continued to produce and sell non-cannabis nursery products, the non-cannabis nursery and retail area would also have to be separate from the Cannabis cultivation and retail areas. See Attachment C for a graphic representation of how these uses could operate together on a site if permitted by State regulations.

Conformity with Local Regulations. An assessment of current and proposed regulations (local) suggests that a CN could not include a cultivation component, because cultivation is only allowed in the M District.

The City has some existing regulations in place for medicinal cannabis cultivation and retail uses, and is working on new regulations to address new State regulations.

Existing Regulations: Currently, a business growing and selling medicinal cannabis would be subject to the following requirements:

- Cultivators must be located in the M District;
- The maximum cultivation allowed in the City is capped at 180,000 sf of canopy;
- Cultivation must occur indoors;
- Cultivation is not a retail use and no retail sales are allowed at the cultivation businesses.
- Retail is limited to 6 locations, and 6 Retailers have been approved;
- Retail can only occur in commercially zoned districts;
- Retail and Cultivation businesses must be located at least 600 feet from a K-12 school; and
- Retailers must be located at least 600 feet from another cannabis Retailer.

Based on these local requirements, a cannabis use with cultivation and retail components could not currently locate in the city since they have different location requirements. Currently, no additional retail uses are permitted because quota of six uses has already been met. Finally, some of the existing locations are not eligible for Retail or Cultivation use because of their proximity to a school or another Retailer.

Proposed Regulations: The proposed regulations are difficult to identify, since they are subject to change. Some of the following issues which will be addressed are:

- The number of Retailers in Berkeley;
- The location of Retailers, Cultivation and Distribution uses in Berkeley; and
- Any buffers from sensitive uses.

Until these regulations are developed, it will be difficult to determine how cannabis uses at existing nurseries might conform or conflict with final ordinance language.

Issues Considered by Staff

Based on these three topics, City staff has identified several implications of permitting existing conventional non-cannabis nurseries to add cannabis uses or convert to a Cannabis Nursery:

1. **Appropriate Location:** Most conventional nurseries are located either in or adjacent to residential areas. A CN could have more impacts (lighting, traffic, odors) on surrounding uses than the existing conventional nurseries.

Consideration should be given to whether these uses should be permitted at any conventional nursery regardless of location or whether the location of the nursery should be considered.

2. Impacts of cannabis uses. Staff is not aware of other retail cannabis nursery uses in urban areas. Therefore, it is difficult to anticipate the impacts this use might have on a neighborhood. Performance standards would need to be developed to address potential impacts.
3. Uses on site. Impacts from the use could vary greatly based on the types and extent of the uses allowed on the site.
4. Expansion of a non-conforming use. Based on the Zoning Ordinance, the addition of cannabis production or sales would be considered a change in use to a conventional nursery. If the nursery is non-conforming due to its location in a Residential district, this change would require a Use Permit in order to be approved.
5. Conformity with State regulations. Since this use would be a Berkeley construct, staff would need to confirm that the use will conform to State regulations, particularly the requirement for separate, distinct areas for cannabis sales and cultivation.
6. Timing with local cannabis regulations. Allowing this use before regulations for retail and cultivation uses are adopted by Council could affect how future local cannabis regulations are implemented. For example, if the Council were to allow two more Retailers in the future, and two CNs operating on a retail basis are already established, no additional Retailers could be established.
7. Exposure to cannabis. The introduction of cannabis uses into previously non-cannabis businesses, such as an existing nursery, could conflict with efforts to reduce children's exposure to cannabis products and advertising.

CONCLUSION

Staff recommends that the Planning Commission consider whether existing nurseries should be allowed to sell cannabis products, and if so, whether this should be done in advance of Council approval of other cannabis regulations for Retailers and Cultivators.

If the Commission wants to consider changes to the BMC and Zoning Ordinance to allow for this kind of use, the Commission should give staff direction on the type of language to include in the ordinance. Staff would then conduct public outreach that would inform development of ordinance language to be considered at a future meeting or public hearing.

ATTACHMENTS

- A. Council referral (July 25, 2017)
- B. Map of existing conventional nurseries and school buffer zones
- C. Graphic of potential retail cannabis site

Item VII.B.1.a
CANNABIS COMMISSION
May 3, 2018



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@ci.berkeley.ca.us

CONSENT CALENDAR

July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Ordinance to Clarify City Policy on Cannabis Nurseries

RECOMMENDATION:

That the Planning Commission and Medical Cannabis Commission create an ordinance to clarify city policy on cannabis and existing nurseries.

BACKGROUND:

Taking into consideration state policies on cannabis regulation, it is imperative that Berkeley follow such trends and clarify city policy on cannabis and existing nurseries. The State of California passed proposition 64 on November 8, 2016, which legalized cannabis for use by adults 21 years or older. Chapter 1 of the Proposition defines a cannabis nursery as “a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana,” and a *Type 4—Cultivation; Nursery* license is designed specifically for cannabis nurseries.

Proposition 64 adopted a zoning requirement for cannabis business. “No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius.”

Sonoma County and Humboldt County adopted the exact definition of a cannabis nursery from state law. Humboldt County sets separate zoning requirements for retail cannabis nursery and wholesale cannabis nurseries. Retail cannabis nurseries are defined as cannabis nurseries that sell their products to the public, while wholesale cannabis nurseries are defined as nurseries that distribute cannabis products to other businesses. Both counties have set square footage limitations for cannabis nurseries. Sonoma County limits cannabis nurseries to be under one acre for outdoor or under 22,000 square feet for indoor. Humboldt County limits the size of retail cannabis nurseries to under 5,000 or under 10,000, as square footage depends on use permits, and under 5 acres or no parcel size limitation for wholesale cannabis nurseries depends on the use permit. Our city should include zoning requirements and square footage limitations on cannabis nurseries.

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According to Chapter 20 of the Proposition, any city within the State of California has the right to adopt and enforce local ordinances to regulate adult use cannabis businesses. It is urgent for the Planning Commission to work in conjunction with the Medical Cannabis Commission to adopt ordinances and regulations for adult use cannabis in order to emulate state progress on cannabis policy.

FINANCIAL IMPLICATIONS: Minimal.

ENVIROMENTAL SUSTAINABILITY

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

Attachment:

Tentative List of Current Plant Nursery

1. Lee's Florist & Nursery

Address: 1420 University Ave, Berkeley CA 94702

District: 4

2. Berkeley Horticultural Nursery

Address: 1310 McGee Ave, Berkeley, CA 94703

District: 5

3. East Bay Nursery

Address: 2332 San Pablo Ave, Berkeley, CA 94702

District: 2

4. Oaktown Native Plant Nursery

Address: 702 Channing Way, Berkeley, CA 94710

District: 2 (Note: within 300 ft of Dreamland For Kids Playground, but legal)

5. Cactus Jungle Nursery and Garden

Address: 1509 Fourth St, Berkeley, CA 94710

District: 1 (Note: within 300 ft of Golden Gate Kids Preschool)

6. Westbrae Nursery

Address: 1272 Gilman St, Berkeley, CA 94706

District: 1 (Note: within 700 ft of Redwood Garden Preschool)

7. Spiral Gardens

Address: 2850 Sacramento St, Berkeley, CA 94702

District: 2 (Note: within 900 ft of San Pablo Park)

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8. FLORA ARTE

Address: 2070 M.L.K. Jr Way, Berkeley, CA 94704

District: 4 (Note: within 900 ft of Berkeley High)

9. Native Here Nursery

Address: 101 Golf Course Dr Tilden Regional Park, Berkeley, CA 94708,
Berkeley, CA 94708

District: 6?

10. Oaktown Native Plant Nursery

Address: 2410 Roosevelt Ave, Berkeley, CA 94703

District: 4 (Note: within 900 ft of Walden Center and School)

11. Succulent & Cactus

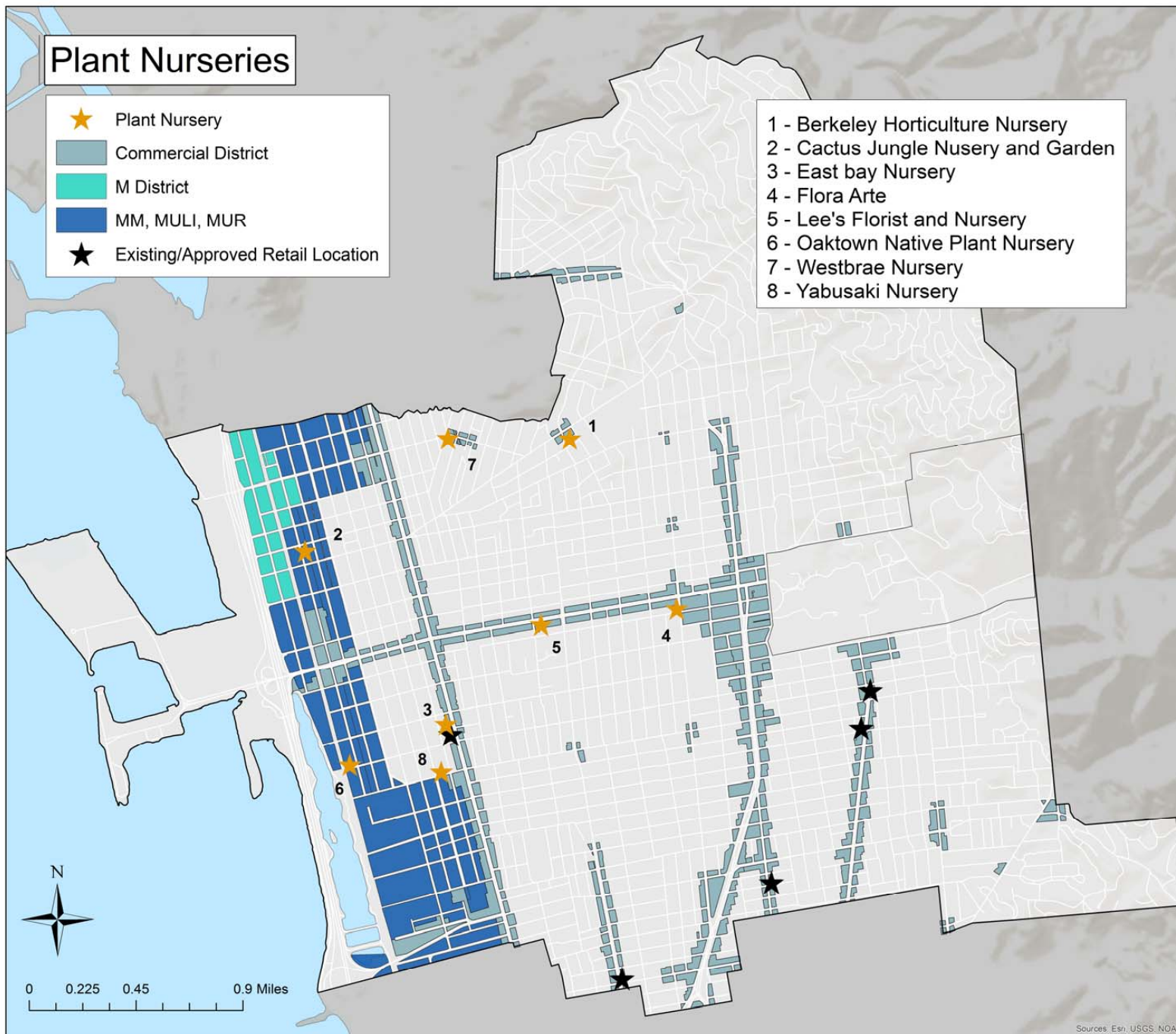
Address: 1735 Delaware St, Berkeley, CA 94703

District: 1 (~~Note: Within 500ft of Ohlone Doggy Park~~)

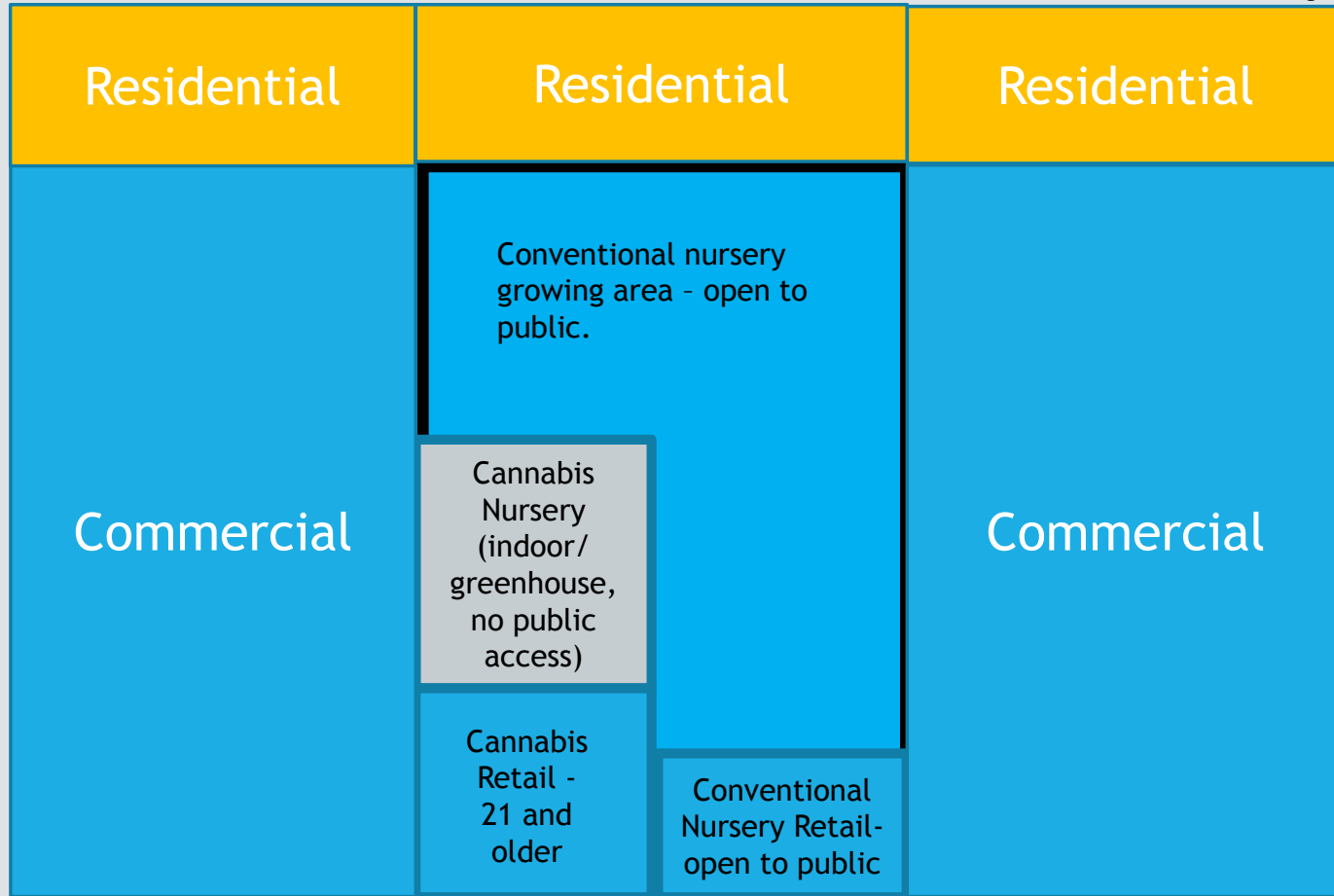
12. The Gardener

Address: 1836 Fourth St, Berkeley, CA 94710

District: 1 (~~Note: Within 300 ft of Golestan Center For Language Immersion and Cultural Education~~)



**Item VII.B.1.c
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SEC. 7.

Section 30914.7 is added to the Streets and Highways Code, to read:

30914.7.

(a) If the voters approve a toll increase pursuant to Section 30923, the authority shall, consistent with the provisions of this section fund the projects and programs described in this subdivision that shall collectively be known as the Regional Measure 3 expenditure plan by bonding or transfers to the Metropolitan Transportation Commission. These projects and programs have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, from toll revenues of all bridges:

(1) BART Expansion Cars. Purchase new railcars for the Bay Area Rapid Transit District (BART) to expand its fleet and improve reliability. The project sponsor is the BART. Five hundred million dollars (\$500,000,000).

(2) Bay Area Corridor Express Lanes. Fund the environmental review, design, and construction of express lanes to complete the Bay Area Express Lane Network, including supportive operational improvements to connecting transportation facilities. Eligible projects include, but are not limited to, express lanes on Interstate 80, Interstate 580, and Interstate 680 in the Counties of Alameda and Contra Costa, Interstate 880 in the County of Alameda, Interstate 280 in the City and County of San Francisco, Highway 101 in the City and County of San Francisco and the County of San Mateo, State Route 84 and State Route 92 in the Counties of Alameda and San Mateo, Interstate 80 from Red Top Road to the intersection with Interstate 505 in the County of Solano, and express lanes in the County of Santa Clara. Eligible project sponsors include the Bay Area Infrastructure Financing Authority, and any countywide or multicounty agency in a bay area county that is authorized to implement express lanes. The Metropolitan Transportation Commission shall make funds available based on performance criteria, including benefit-cost and project readiness. Three hundred million dollars (\$300,000,000).

(3) Goods Movement and Mitigation. Provide funding to reduce truck traffic congestion and mitigate its environmental effects. Eligible projects include, but are not limited to, improvements in the County of Alameda to enable more goods to be shipped by rail, access improvements on Interstate 580, Interstate 80, and Interstate 880, and improved access to the Port of Oakland. The Metropolitan Transportation Commission shall consult and coordinate with the Alameda County Transportation Commission to select projects for the program. Eligible applicants include cities, counties, countywide transportation agencies, rail operators, and the Port of Oakland. The project sponsor is the Metropolitan Transportation Commission and the Alameda County Transportation Commission. One hundred sixty million dollars (\$160,000,000).

(4) San Francisco Bay Trail/Safe Routes to Transit. Provide funding for a competitive grant program to fund bicycle and pedestrian access improvements on and in the vicinity of the state-owned toll bridges connecting to rail transit stations and ferry terminals. Eligible applicants include cities, counties, transit operators, school districts, community colleges, and universities. The project sponsor is the Metropolitan Transportation Commission. One hundred fifty million dollars (\$150,000,000).

(5) Ferry Enhancement Program. Provide funding to purchase new vessels, upgrade and rehabilitate existing vessels, build facilities and landside improvements, and upgrade existing facilities. The project sponsor is the San Francisco Bay Area Water Emergency Transportation Authority. Three hundred million dollars (\$300,000,000).

(6) BART to San Jose Phase 2. Extend BART from Berryessa Station to San Jose and Santa Clara. The project sponsor is the Santa Clara Valley Transportation Authority. Three hundred seventy-five million dollars (\$375,000,000).

(7) Sonoma-Marin Area Rail Transit District (SMART). Provide funding to extend the rail system north of the Charles M. Schulz-Sonoma County Airport to the Cities of Windsor and Healdsburg. The project sponsor is the Sonoma-Marin Area Rail Transit District. Forty million dollars (\$40,000,000).

(8) Capitol Corridor. Provide funding for track infrastructure that will improve the performance of Capital Corridor passenger rail operations by reducing travel times, adding service frequencies, and improving system safety and reliability. The project sponsor is the Capital Corridor Joint Powers Authority. Ninety million dollars (\$90,000,000).

(9) Caltrain Downtown Extension. Extend Caltrain from its current terminus at Fourth Street and King Street to the Transbay Transit Center. The Metropolitan Transportation Commission shall allocate funding to the agency designated to build the project, which shall be the project sponsor. Three hundred twenty-five million dollars (\$325,000,000).

(10) MUNI Fleet Expansion and Facilities. Fund replacement and expansion of the San Francisco Municipal Transportation Agency's MUNI vehicle fleet and associated facilities. The project sponsor is the San Francisco Municipal Transportation Agency. One hundred forty million dollars (\$140,000,000).

(11) Core Capacity Transit Improvements. Implement recommendations from the Core Capacity Transit Study and other ideas to maximize person throughput in the transbay corridor. Eligible projects include, but are not limited to, transbay bus improvements and high-occupancy vehicle (HOV) lane access improvements. Priority funding shall be the Alameda-Contra Costa Transit District's (AC Transit) Tier 1 and Tier 2 projects identified in the study. The project sponsors are the Metropolitan Transportation Commission, Alameda County Transportation Commission, and AC Transit. One hundred forty million dollars (\$140,000,000).

(12) Alameda-Contra Costa Transit District (AC Transit) Rapid Bus Corridor Improvements. Fund bus purchases and capital improvements to reduce travel times and increase service frequency along key corridors. The project sponsors are AC Transit and Alameda County Transportation Commission. One hundred million dollars (\$100,000,000).

(13) Transbay Rail Crossing. Fund preliminary engineering, environmental review, and design of a second transbay rail crossing and its approaches to provide additional rail capacity, increased reliability, and improved resiliency to the corridor. Subject to approval by the Metropolitan Transportation Commission, funds may also be used for construction, and, if sufficient matching funds are secured, to fully fund a useable segment of the project. The project sponsor is the Bay Area Rapid Transit District. Fifty million dollars (\$50,000,000).

(14) Tri-Valley Transit Access Improvements. Provide interregional and last-mile transit connections on the Interstate 580 corridor in the County of Alameda within the Tri-Valley area of Dublin, Pleasanton, and Livermore. The Metropolitan Transportation Commission shall consult with the Alameda County Transportation Commission, the Bay Area Rapid Transit District, and local jurisdictions to determine the project sponsor. One hundred million dollars (\$100,000,000).

(15) Eastridge to BART Regional Connector. Extend Santa Clara Valley Transportation Authority light rail from the Alum Rock station to the Eastridge Transit Center. The project sponsor is the Santa Clara Valley Transportation Authority. One hundred thirty million dollars (\$130,000,000).

(16) San Jose Diridon Station. Redesign, rebuild, and expand Diridon Station to more efficiently and effectively accommodate existing regional rail services, future BART and high-speed rail service, and Santa Clara Valley Transportation Authority light rail and buses. The project sponsor shall consider accommodating a future connection to Norman Y. Mineta San Jose International Airport and prioritizing non-auto access modes. The project sponsor is the Santa Clara Valley Transportation Authority. One hundred million dollars (\$100,000,000).

(17) Dumbarton Corridor Improvements. Fund planning, environmental review, design, and construction of capital improvements within Dumbarton Bridge and rail corridor in the Counties of Alameda and San Mateo to relieve congestion, increase person throughput, and offer reliable travel times. Eligible projects include, but are not limited to, the projects recommended in the Dumbarton Corridor Transportation Study and improvements to facilitate rail and transit connectivity among the Altamont Corridor Express, Capitol Corridor, and Bay Area Rapid Transit District, including a rail connection at Shinn Station. The project sponsors are the Bay Area Toll Authority, Alameda County Transportation Commission, the San Mateo County Transit District, and the San Mateo County Transportation Authority. One hundred thirty million dollars (\$130,000,000).

(18) Highway 101/State Route 92 Interchange. Fund improvements to the interchange of Highway 101 and State Route 92 in the County of San Mateo. The project is jointly sponsored by the City/County Association of Governments of San Mateo County and the San Mateo County Transportation Authority. Fifty million dollars (\$50,000,000).

(19) Contra Costa Interstate 680/State Route 4 Interchange Improvements. Fund improvements to the Interstate 680/State Route 4 interchange to improve safety and reduce congestion, including, but not limited to, a new direct connector between northbound Interstate 680 and westbound State Route 4, a new direct connector between eastbound State Route 4 and southbound Interstate 680, and widening of State Route 4 to add auxiliary lanes and high-occupancy vehicle lanes. The project sponsor is the Contra Costa Transportation Authority. Two hundred ten million dollars (\$210,000,000).

(20) Highway 101-Marin/Sonoma Narrows. Construct northbound and southbound high-occupancy vehicle lanes on Highway 101 between Petaluma Boulevard South in Petaluma and Atherton Avenue in Novato. The project sponsors are the Transportation Authority of Marin and the Sonoma County Transportation Authority. One hundred twenty million dollars (\$120,000,000).

(21) Solano County Interstate 80/Interstate 680/State Route 12 Interchange Project. Construct Red Top Road interchange and westbound Interstate 80 to southbound Interstate 680 connector. The project sponsor is the Solano Transportation Authority. One hundred fifty million dollars (\$150,000,000).

(22) Interstate 80 Westbound Truck Scales. Improve freight mobility, reliability, and safety on the Interstate 80 corridor by funding improvements to the Interstate 80 Westbound Truck Scales in the County of Solano. The project sponsor is the Solano Transportation Authority. One hundred five million dollars (\$105,000,000).

(23) State Route 37 Improvements. Fund near-term and longer-term improvements to State Route 37 to improve the roadway's mobility, safety, and long-term resiliency to sea level rise and flooding. For the purposes of the environmental review and design, the project shall include the segment of State Route 37 from the intersection in Marin County with Highway 101 to the intersection with Interstate 80 in the County of Solano. Capital funds may be used on any segment along this corridor, as determined by the project sponsors. The project is jointly sponsored by the Transportation Authority of Marin, the Napa Valley Transportation Authority, the Solano Transportation Authority, and the Sonoma County Transportation Authority. Funds for this project may be allocated to any of the project sponsors. One hundred million dollars (\$100,000,000)

(24) San Rafael Transit Center. Construct a replacement to the San Rafael (Bettini) Transit Center on an existing or new site, or both, in downtown San Rafael. The selected alternative shall be approved by the City of San Rafael, the Golden Gate Bridge, Highway and Transportation District, the Transportation Authority of Marin, and Marin Transit. The project sponsor is the Golden Gate Bridge, Highway and Transportation District. Thirty million dollars (\$30,000,000).

(25) Richmond-San Rafael Bridge Access Improvements. Fund eastbound and westbound improvements in the Richmond-San Rafael Bridge corridor, including a direct connector from northbound Highway 101 to eastbound Interstate 580, westbound access and operational improvements in the vicinity of the toll plaza east of the bridge in Contra Costa County, and Richmond Parkway interchange improvements. Of the amount allocated to this project, one hundred thirty-five million dollars (\$135,000,000) shall be dedicated to the direct connector from northbound Highway 101 to eastbound Interstate 580 in Marin County and seventy-five million dollars (\$75,000,000) shall be dedicated to the projects in Contra Costa County. The project sponsors are the Bay Area Toll Authority, the Contra Costa Transportation Authority, and the Transportation Authority of Marin. Two hundred ten million dollars (\$210,000,000).

(26) North Bay Transit Access Improvements. Provide funding for transit improvements, including, but not limited to, bus capital projects, including vehicles, transit facilities, and access to transit facilities, benefiting the Counties of Marin, Sonoma, Napa, Solano, and Contra Costa. Priority shall be given to projects that are fully funded, ready for construction, and serving rail transit or transit service that operates primarily on existing or fully funded high-occupancy vehicle lanes. The project sponsor is the Metropolitan Transportation Commission. Eligible applicants are any transit operator providing service in the Counties of Contra Costa, Marin, Napa, Solano, or Sonoma. One hundred million dollars (\$100,000,000).

(27) State Route 29. Eligible project expenses include State Route 29 major intersection improvements, including Soscol Junction, and signal and signage improvements, which may include multimodal infrastructure and safety improvements between Carneros Highway (State Route 12/121) and American Canyon Road. The project sponsor is the Napa Valley Transportation Authority. Twenty million dollars (\$20,000,000).

(28) Next-Generation Clipper Transit Fare Payment System. Provide funding to design, develop, test, implement, and transition to the next generation of Clipper, the bay area's transit fare payment system. The next-generation system will support a universal, consistent, and seamless transit fare payment system for the riders of transit agencies in the bay area. The project sponsor is the Metropolitan Transportation Commission. Fifty million dollars (\$50,000,000).

(29) Interstate 680/Interstate 880/Route 262 Freeway Connector. Connect Interstate 680 and Interstate 880 in southern Alameda County to improve traffic movement, reduce congestion, and improve operations and safety. The project sponsor is the Alameda County Transportation Commission. Fifteen million dollars (\$15,000,000).

(30) Interstate 680/State Route 84 Interchange Reconstruction Project. Improve safety and regional and interregional connectivity by conforming State Route 84 to expressway standards between south of Ruby Hill Drive and the Interstate 680 interchange in southern Alameda County and implementing additional improvements to reduce weaving and merging conflicts and help address the additional traffic demand between Interstate 680 and State Route 84. The project sponsor is Alameda County Transportation Commission. Eighty-five million dollars (\$85,000,000).

(31) Interstate 80 Transit Improvements. Fund improvements to support expanded bus service in the Interstate 80 corridor including, but not limited to, bus purchases, expansion of the WestCAT storage yard and maintenance facility. Fund implementation of the San Pablo Avenue Multi-modal Corridor (AC Transit). The project sponsor is Contra Costa Transportation Authority. Twenty-five million dollars (\$25,000,000).

(32) Byron Highway-Vasco Road Airport Connector. Fund construction of a new connector between Byron Highway and Vasco Road south of Camino Diablo Road as well as shoulder and other improvements to the Byron Highway, including a railroad grade separation, to improve safety and access to the Byron Airport and to facilitate economic development and access for goods movement in East Contra Costa County. The project sponsor is Contra Costa Transportation Authority. Ten million dollars (\$10,000,000).

(33) Vasco Road Safety Improvements. Fund the widening of lanes and construction of a concrete median barrier along 2.5 miles of Vasco Road beginning approximately three miles north of the Contra Costa/Alameda County Line. The project sponsor is Contra Costa Transportation Authority. Fifteen million dollars (\$15,000,000).

(34) East Contra Costa County Transit Intermodal Center. Fund the construction of a Transit Intermodal Center in Brentwood enhancing access to eBART and Mokelumne Bike Trail/Pedestrian Overcrossing at State Route 4. The project sponsor is Contra Costa Transportation Authority. Fifteen million dollars (\$15,000,000).

(35) Interstate 680 Transit Improvements. Fund improvements that will enhance transit service in the Interstate 680 corridor, including, but not limited to, implementing bus operations on shoulder (BOS), technology-based intermodal transit centers/managed parking lots and development of technology to enhance real-time travel information. Fund implementation of Shared Autonomous Vehicles (SAVs) to improve first and last mile transit connectivity. The project sponsor is Contra Costa Transportation Authority. Ten million dollars (\$10,000,000).

(b) Pursuant to subdivision (a) of Section 30923, if the authority selects a toll increase to be placed on the ballot in an amount less than three dollars (\$3), the funding assigned to the projects and programs identified in subdivision (a) shall be adjusted proportionately to account for reduced funding capacity. The authority shall adopt a resolution detailing the updated Regional Measure 3 capital and operating funding available and listing the revised funding amounts for each project within 90 days of the certification of the election by the last county to certify the election on the toll increase. The authority shall update this resolution as needed to reflect additional tolls approved in subsequent elections.

(c) (1) Not more than 16 percent, up to sixty million dollars (\$60,000,000), of the revenues generated each year from the toll increase approved by the voters pursuant to Section 30923 shall be made available annually for the purpose of providing operating assistance as set forth in the authority's annual budget resolution for the purposes listed in paragraph (2). The funds shall be made available to the provider of the transit services subject to the performance measures described in paragraph (3).

(2) The Metropolitan Transportation Commission shall annually fund the following operating programs from the revenue generated each year from the toll increase approved by the voters pursuant to Section 30923 as another component of the Regional Measure 3 expenditure plan:

(A) The San Francisco Transbay Terminal. Eight percent of the amount available for operating assistance pursuant to paragraph (1), not to exceed five million dollars (\$5,000,000). These funds are available for transportation-related costs associated with operating the terminal. The Transbay Joint Powers Authority shall pursue other long-term, dedicated operating revenue to fund its operating costs. To the extent that a portion or all of the toll revenue provided pursuant to this subparagraph is not needed in a given fiscal year, the Metropolitan Transportation Commission shall reduce the allocation accordingly.

(B) (i) Expanded Ferry Service. Ten million dollars (\$10,000,000) in the first year of allocation, fifteen million dollars (\$15,000,000) in the second year of allocation, twenty million dollars (\$20,000,000) in the third year of allocation, and twenty-five million dollars (\$25,000,000) in the fourth year of allocation. These allocation amounts shall be subject to the adjustments in subdivision (b). In the fifth year of allocation and thereafter, 58 percent of the amount available for operating assistance pursuant to paragraph (1), not to exceed thirty-five million dollars (\$35,000,000). These funds shall be made available to the San Francisco Bay Area Water Emergency Transportation Authority (WETA) to support expanded ferry service, including increased frequencies of existing routes and the operation of new routes.

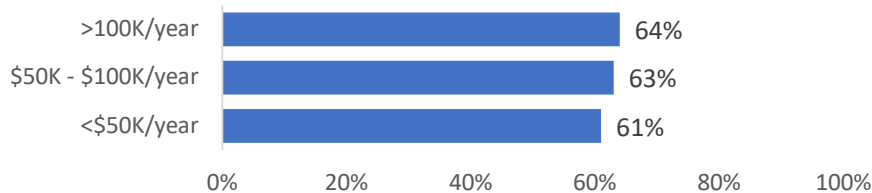
(ii) To the extent that funds provided pursuant to clause (i) are not requested for expenditure by WETA in a given year, the funds shall be held by the authority in a reserve account. Those funds shall be made available to WETA for any capital or operating purpose. Prior to receiving an allocation of those funds, WETA shall submit a request to the Metropolitan Transportation Commission detailing how the funds shall be used. An allocation of those funds shall constitute an augmentation of the funding provided in paragraph (5) of subdivision (a) and be treated as such in any reports by the authority regarding the Regional Measure 3 expenditure plan.

(C) Regional Express Bus. Thirty-four percent of the amount available for operating assistance pursuant to paragraph (1), not to exceed twenty million dollars (\$20,000,000), to be distributed for bus service in the bridge corridors, prioritizing bus routes that carry the greatest number of transit riders. To the extent that a portion or all of the toll revenue provided pursuant to this subparagraph is not needed in a given fiscal year, the Metropolitan Transportation Commission shall reduce the allocation accordingly.



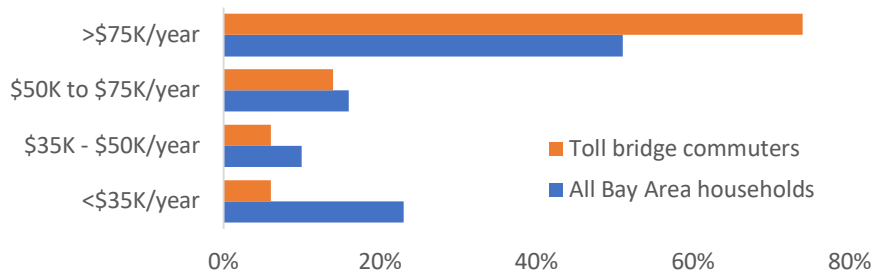
Voters of all income levels support Regional Measure 3

- After hearing about the toll increase and expenditure plan, voters at all income levels support RM3



Toll payers tend to have higher incomes than overall Bay Area population

- Seventy percent of toll-payers have household incomes over \$75,000 per year, exceeding the 51 percent of households overall that earn at this level. At the lower end, only six percent of bridge toll-payers have household incomes below \$35,000 per year.



Regional Measure 3 expenditures will create tens of thousands of jobs

- RM3 provides \$60 million per year of operating money for ferries, local and regional express bus, and Transbay Transit Center operations. These expenditures will create about 1,500 new permanent jobs, including transit agency employees, supporting jobs, and other locally-induced employment.
- RM3 also provides \$4.5 billion of new money for construction projects. These expenditures will create about 72,000 job-years of new employment.
- Most of these new jobs will not require formal education above high school and many—especially construction jobs and transit agency jobs—offer excellent pay and career opportunities. As a result, RM3 expenditures will create a ladder of economic opportunity for lower income, lower education individuals.

Discounts are available to reduce costs for bridge travelers and low income transit riders

- Carpoolers will continue to receive a 50 percent reduction in the total bridge toll. (Currently, 30,500 carpool vehicles cross state-owned toll bridges each day.)
- RM3 includes a toll discount for motorists that cross two state-owned toll bridges. The discount will provide a 50 percent reduction in the RM3 increase, saving these commuters about \$375 per year).
- The Metropolitan Transportation Commission is developing a new regional transit fare discount program that will reduce transit fares by 30 percent to 50 percent for low income individuals.



YES on RM3: Relieve Traffic in Alameda County

As Bay Area traffic grows to crisis levels, the State Legislature authorized a bold, coordinated, region-wide traffic relief plan called Regional Measure 3 that will be on the June 5, 2018 ballot.

The RM3 plan builds on improvements from past local transportation measures to revitalize transportation infrastructure and reduce traffic. RM3 will increase AC Transit service frequency, expand bus service in the Bay Bridge corridor and improve safety and congestion at the Interstate 680/State Route 84 interchange. RM3 will additionally reduce travel times in the Dumbarton Bridge corridor, improve Amtrak service and upgrade highways throughout Alameda County, among other projects.

Alameda County RM3 Projects

Alameda-Contra Costa Transit

District: Bus purchases and capital improvements to reduce travel times and increase service frequency

Tri-Valley Transit Access

Improvements: Provide interregional and last-mile transit connections on the Interstate 580 corridor

Interstate 680/State Route 84

Interchange Reconstruction: Reduce congestion and improve safety by making SR 84 a four-lane expressway and other improvements between 680 and 84

Vasco Road Safety Improvements:

Widen lanes and construct a concrete median barrier to enhance road safety

Interstate 680 Transit

Improvements: Enhance transit service in the Interstate 680 corridor, including bus operations, transit centers and real-time travel information

Dumbarton Bridge Improvements:

Design and construction of improvements to relieve congestion, increase transit capacity and enhance reliability of travel times along the Dumbarton bridge

Interstate 680/Interstate 880/ Route 262 Freeway Connector:

Connect Interstate 680 and Interstate 880 to improve traffic movement, reduce congestion and improve operations and safety

Transbay Rail Crossing: Preliminary engineering and design of second BART transbay rail crossing

AC Transit Rapid Bus Corridor

Improvements: Improvements to reduce travel times and increase service frequency along key corridors

Bay Bridge Corridor Transit

Improvements: Provide faster travel times to and across the Bay Bridge for AC Transit and other transbay buses

Capitol Corridor:

Upgrade Amtrak infrastructure to improve the Capitol Corridor passenger rail, reduce travel times and increase system safety

Major Ferry Enhancement Program:

Double the frequency of WETA ferry service and add new routes and terminals in Berkeley, Alameda and the North Bay, Central Bay and South Bay

Regional Projects that Benefit Alameda County

BART to San Jose: Complete the BART extension to downtown San Jose, connecting to CalTrain and Santa Clara

Expand Regional Express Bus

Service: Reduce highway congestion by expanding regional express bus service throughout the Bay Area

BART Expansion Cars: Expand BART fleet with 300 additional new railcars to enable more service,

longer trains, less crowding and greater reliability

Bay Area Corridor Express Lanes:

New highway Express Lanes that are actively managed to be congestion-free at all times

Goods Movement and Mitigation:

Reduce truck traffic, truck congestion and truck pollution with improvements on Interstates 580, 80, 880 and on freight rail and at the Port of Oakland

San Francisco Bay Trail/Safe Routes

to Transit: Improvements to bicycle and pedestrian access on and around state-owned bridges connecting to rail transit stations and ferry terminals

Next-Generation Clipper Transit

Fare Payment System: Develop and implement the next generation of the Clipper transit fare payment system to use a single card to pay for many different transit systems

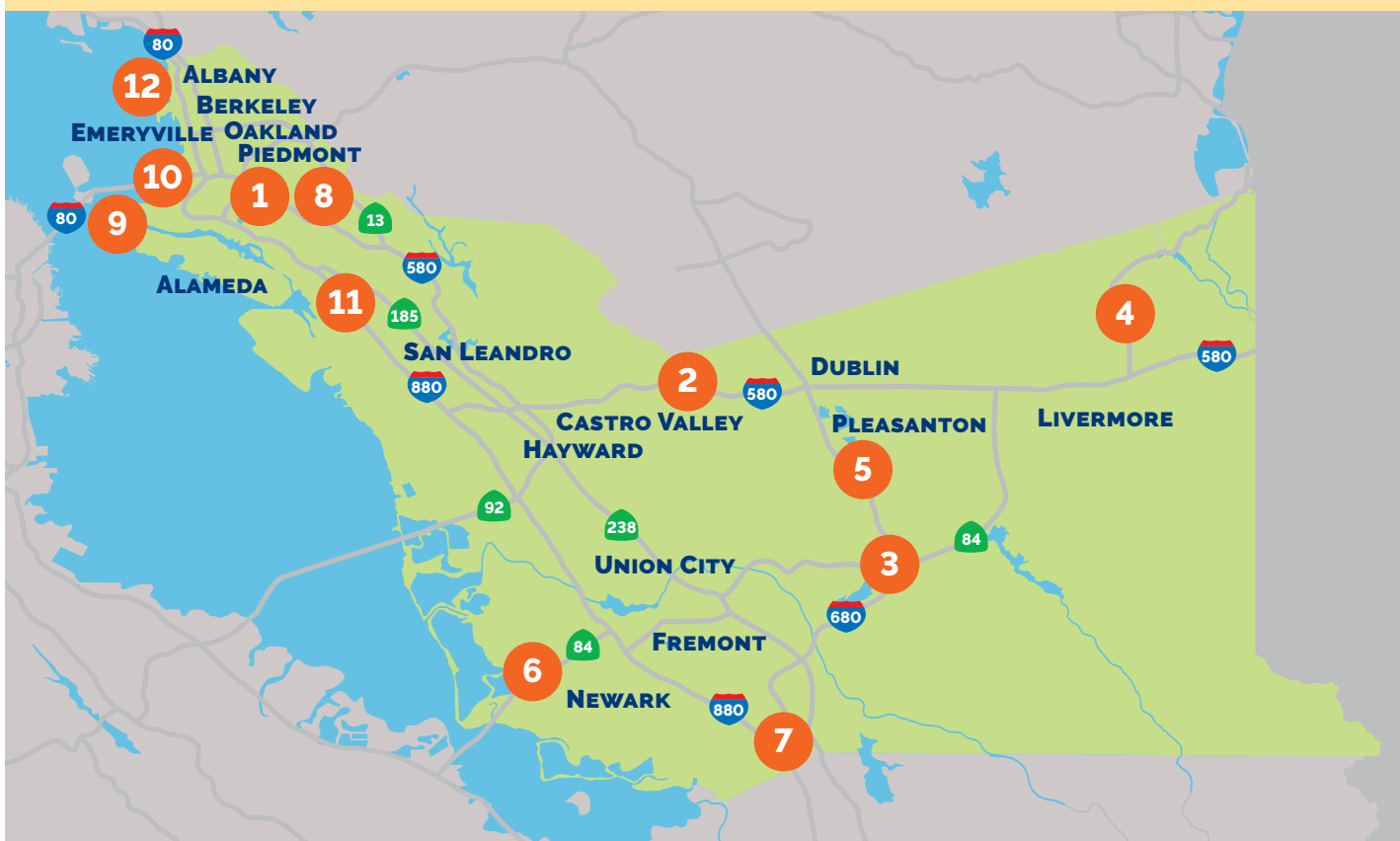


The Bay Area Council, Silicon Valley Leadership Group and SPUR are co-sponsoring the effort to support Regional Measure 3 and will be working with elected officials and community groups from all nine counties to pass this vital measure. Visit us online at www.YesonRM3.com.

RM3 Projects that Benefit Alameda County

Alameda County RM3 Projects

- | | | |
|--|---|---|
| 1 Alameda-Contra Costa Transit District | 5 Interstate 680 Transit Improvements | 9 Transbay Rail Crossing |
| 2 Tri-Valley Transit Access Improvements | 6 Dumbarton Bridge Improvements | 10 Bay Bridge Corridor Transit Improvements |
| 3 Interstate 680/State Route 84 Interchange Reconstruction | 7 Interstate 680/Interstate 880/Route 262 Freeway Connector | 11 Capitol Corridor |
| 4 Vasco Road Safety Improvements | 8 AC Transit Rapid Bus Corridor Improvements | 12 Major Ferry Enhancement Program |



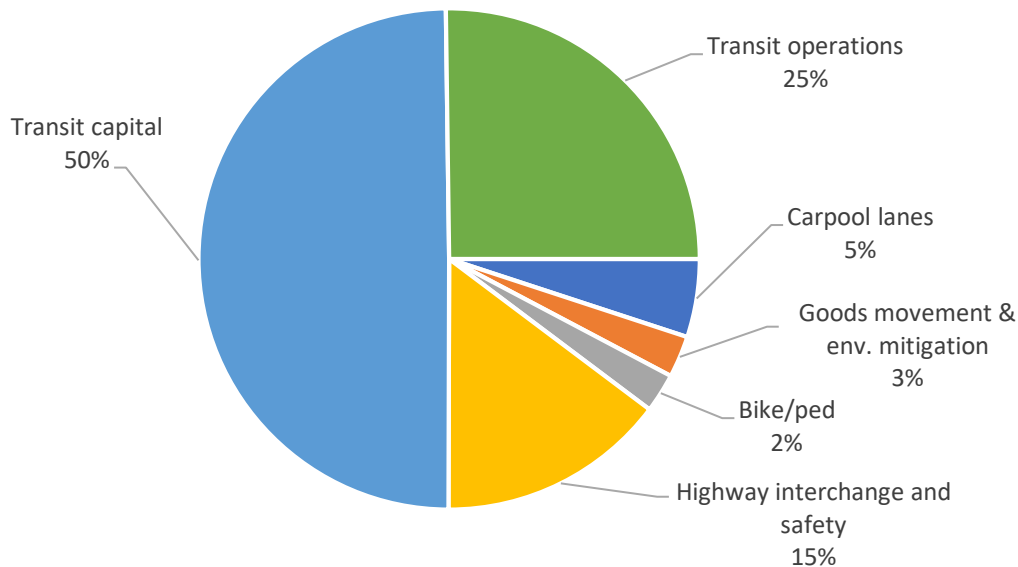
Regional Projects that Benefit Alameda County

- | | | |
|---------------------------------------|-----------------------------------|---|
| ● BART to San Jose | ● Bay Area Corridor Express Lanes | ● San Francisco Bay Trail/ Safe Routes to Transit |
| ● Expand Regional Express Bus Service | ● Goods Movement and Mitigation | ● Next-Generation Clipper Transit Fare Payment System |
| ● BART Expansion Cars | | |

For more information on our campaign, please contact Annie Eagan at annie@eaganconsult.com or (415) 269-5105.
 Paid for by Yes on Regional Measure 3 — Keeping the Bay Area Moving, sponsored by Bay Area Civic Leadership Associations, committee major funding from John Doerr, San Francisco 49ers and Sobrato Organization.



Regional Measure 3 Emphasizes Public Transit



The majority of RM3 funds (75%) will be used to improve transit, producing a conservatively estimated GHG reduction of 1.5 million metric tons over 25 years. *All* of these transit funds will facilitate transition away from personal automobiles, and several projects have further environmental benefits from carbon-free power:

- \$500 million for BART, which is rapidly progressing towards a goal of procuring 100% renewable power
- \$140 million for Muni light rail vehicles, which are powered by carbon-free hydroelectric power from Hetch Hetchy
- \$325 million for the Caltrain (downtown extension), which is currently converting from diesel to electric power.

Five percent of RM3 funds will be used to create new carpool Express Lanes that will accommodate regional express bus, high occupancy employer shuttles, and carpools. Any remaining lane capacity will be available for toll-paying non-carpool vehicles, and tolls will be dynamically varied to maintain congestion free conditions that minimize fuel consumption and tailpipe emissions.

Goods movement funding (3%) will reduce truck congestion, enable greater use of freight rail, and support adoption of lower-emission and zero-carbon power in freight vehicles.

Bicycle and pedestrian funding (2%) will expand the Bay Trail.

Fifteen percent of funds will go to highway projects that modernize interchanges and to other safety improvement projects. No funds are provided to add new lanes to highways.

From: Klein, Jordan
Sent: Thursday, May 03, 2018 2:27 PM
To: Burroughs, Timothy
Subject: CoB Arts & Culture Plan

Hi Timothy,

At their meeting last month, the Civic Arts Commission adopted an update to the City of Berkeley's Arts & Culture Plan, which articulates a common vision for the arts, establishes shared goals for the next decade, and provides a framework for the activities of the Commission, Civic Arts staff, and other nonprofit and institutional arts stakeholders in Berkeley. The plan is available [online at this link](#). The Commission will be sending the plan to Council for approval this summer.

The plan includes a list of policy statements and 57 action steps. This is a 10-year plan, so many of the action steps listed are long-term; the plan acknowledges that for many of the proposed items, there are not resources currently allocated or available for implementation.

Each of the action steps includes a 'proposed implementation team'. Three of the action steps include the Planning & Development Department in the proposed implementation team (as 'support' rather than the lead):

- **Policy 1.1. Action C: Facilitate the creation of artist workspaces through land use policy changes, such as encouraging use of ground-floor commercial spaces by individual artists and arts non-profits.** (page 35)
 - This item is identified as a mid-term; i.e., roughly 2-5 year implementation period. There is no lead entity identified, and there are no resources identified. So this is an aspirational item. But if and when resources and a lead entity are identified, there will likely be an effort to engage Planning to be part of the project.
- **Policy 1.2. Action B: Identify vacant and underutilized buildings that could be converted for use as artist housing and workspaces.** (page 36)
 - The note on the previous item applies here also.
- **Policy 1.2. Action D: Modify MULI, MUR Districts to incentivize development of affordable housing and live/work spaces for artists that are compatible with existing artisan and industrial uses.** (page 36)
 - The lead for this one is identified as Berkeley City Council. It's a long-term item (5 to 10 year implementation period).

I don't think any action on your part is required. But let me know if you have any concerns about this or would like to discuss.

Note that the Planning Commission is also listed in the implementation team (also as 'support') for the first and third bullets above. I think it might suffice, for the purposes of notification, to have the Commission Secretary forward this e-mail to the Commission, or distribute a copy at their next meeting. If any Commissioners have any comments or concerns, they can contact me. And if the Planning Commission is interested in an informational presentation and discussion on the Arts & Culture Plan at some point, I think Civic Arts staff and/or commissioners could probably accommodate that.

Thanks,
Jordan

Jordan Klein
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