



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

Click here to view the entire Agenda Packet

**Wednesday, July 1, 2020**  
**7:00 PM**

**PUBLIC ADVISORY:** THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Planning Commission (PC) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID19 virus, there will not be a physical meeting location available.

**To access the meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/92939134810>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial **1-669-900-6833** and enter Meeting ID: **929 3913 4810**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

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:** Wiblin, Brad, appointed by Councilmember Kesarwani, District 1  
Martinot, Steve, appointed by Councilmember Davila, District 2  
Schildt, Christine, appointed by Councilmember Bartlett, District 3  
Lacey, Mary Kay, Vice Chair, appointed by Councilmember Harrison, District 4  
Beach, Benjamin, appointed by Councilmember Hahn, District 5  
Kapla, Robb, Chair, appointed by Councilmember Wengraf, District 6  
Krpata, Shane, appointed by Councilmember Robinson, District 7

Vincent, Jeff, appointed by Councilmember Droste, District 8  
Wrenn, Rob, 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.
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 **March 4, 2020**.
8. **Future Agenda Items and Other Planning-Related Events:**

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

- |  |  |
|--|--|
| <p>9. <b>Action:</b><br/><b>Recommendation:</b><br/><br/><b>Written Materials:</b><br/><b>Presentation:</b></p>      | <p><b>Public Hearing: Home Occupations Ordinance</b><br/><i>Conduct a public hearing and, upon conclusion, recommend Zoning Ordinance amendments for Home Occupations to City Council.</i><br/><i>Attached</i><br/><i>NA</i></p> |
| <p>10. <b>Discussion:</b><br/><b>Recommendation:</b><br/><br/><b>Written Materials:</b><br/><b>Presentation:</b></p> | <p><b>Referrals Supporting Berkeley Businesses</b><br/><i>Discuss and provide feedback on approach to referrals supporting Berkeley businesses</i><br/><i>Attached</i><br/><i>NA</i></p>   |

**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:**

- [April 28 - City Council Item 8 – Eight Previous Referrals](#) (No attachments)

**Communications:**

- April 23 – Commission Meeting Update
- May 21 – ADU and JADU Regulations
- May 29 – Commission Meeting Update

- June 12 – Short Term Rental Regulations

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

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

## **ADJOURNMENT**

### **\*\*\*\* MEETING PROCEDURES \*\*\*\***

#### **Public Testimony Guidelines:**

All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. 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. 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.

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

Written comments should be directed to:

Planning Commission  
**Alene Pearson, Secretary**  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

Fax: (510) 981-7489  
E-mail: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

Correspondence received by 12 noon, eight days before this meeting, will be provided with the agenda materials provided to the Commission. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies.

Correspondence received after this deadline will be conveyed to the Commission in the following manner:

- Correspondence received by 12 noon two days before this meeting, will be conveyed to the Commission in a Supplemental Communication, which will be released around noon one day before the meeting; or
- Correspondence received after 12 noon two days before this meeting will be saved in the project administrative record.

**Note: It will not be possible to submit written comments at the meeting.**

**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.

**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.

**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:** 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.

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **June 24, 2020**.

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Alene Pearson  
Planning Commission Secretary



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2   **March 4, 2020**

3 The meeting was called to order at 7:02 p.m

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

5 **1. ROLL CALL:**

6 **Commissioners Present:** Benjamin Beach (left at 9:15pm), Robb Kapla, Shane Krpata,  
7 Mary Kay Lacey, Steve Martinot, Christine Schildt (left at 9:15pm), Jeff Vincent, Brad Wiblin  
8 (arrived at 7:10), and Rob Wrenn.

9 **Commissioners Absent:** None.

10 **Staff Present:** Secretary Alene Pearson, Katrina Lapira, and Justin Horner.

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

12 **3. PUBLIC COMMENT PERIOD:** 0

13 **4. PLANNING STAFF REPORT:**

- 14 • ZORP Subcommittee Meeting - February 24, 2020
- 15 • JSISHL Commission Meeting - February 26, 2020
- 16 • Next Adeline Corridor Subcommittee Meeting - March 18, 2020
- 17 • Recommended Zoning Ordinance Amendments at City Council - March 24, 2020
- 18 • Next Planning Commission Meeting - April 1, 2020
- 19 • Emergency Operations Center (EOC) activation in response to COVID- 19. Visit  
20 <https://www.cityofberkeley.info/coronavirus/> for most up-to-date information.  
21  
22

23 **Information Items:**

- 24 • Comprehensive Cannabis
  - 25 ○ City Council Meeting Annotated Agendas – January 28 + February 11, 2020
  - 26 ○ City Council Staff Report – January 28, 2020

27  
28 **Communications:**

- 29 • February 6 – Dumler, Southside EIR
- 30 • February 13 – Gold, Parking Reform
- 31 • February 13 – Trauss, Southside EIR

- 32 • February 21 – Siegel, Parking Reform
- 33 • February 25 – Hyde- Wang, Parking Reform

34

35 **Late Communications** (Received after the Packet deadline): *None*.

- 36 • March 3 – UCB Democrats, Parking Reform

37

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

- 39 • March 4 – Staff Presentation, Item 9
- 40 • March 4 – Staff Presentation, Item 10
- 41 • March 4 – Hansen, Parking Reform
- 42 • March 4 – Clarke, Parking Reform

43 **5. CHAIR REPORT:** *None*.

44

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

47

- 48 • Zoning Ordinance Revision Project (ZORP): February 24 meeting continued to a date to  
49 be determined in March.

50

- 51 • Joint Subcommittee for the Implementation of State Housing Laws (JSISHL): At the  
52 meeting on February 26, JSISHL discussed objective standards for shadows, design, and  
53 density.

54

- 55 • Adeline Corridor Specific Plan Subcommittee: The next meeting is on March 18.

56

57 **7. APPROVAL OF MINUTES:**

58 Motion/Second/Carried (Krpata/Vincent) to approve the Planning Commission Meeting  
59 Minutes from February 5, 2020 with the discussed edits to Item 9 and Item 10.

60

61 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None.  
62 Abstain: None. Absent: None. (9-0-0-0)

63

64 **FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** To be discussed  
65 with Item 11.

66 **AGENDA ITEMS**

67 **9. Action:** **Public Hearing: Parking Reform**

68 Staff discussed proposed Zoning Ordinance amendments that eliminate parking requirements,  
69 establish parking maximums, establish transportation demand management (TDM)  
70 requirements, and codify bicycle parking requirements from the 2017 Berkeley Bicycle Plan. The  
71 Commission adopted the majority of the proposed draft Zoning Ordinance amendments with  
72 modifications noted in the motions. Planning Commission asked to revisit accessibility parking  
73 requirements at a future date.

74 Motion/Second/Carried (Wrenn/Vincent) to adopt proposed draft Zoning Ordinance  
75 amendments to eliminate parking minimums with modifications to 1) maintain off-street  
76 parking requirements for residential projects in the Hillside Overlay on roads less than 26 feet  
77 in width; and 2) provide an option to waive these requirements with the approval of an  
78 Administrative Use Permit if conditions outlined by the Fire Department are met.

79  
80 Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None.  
81 Abstain: None. Absent: None. (9-0-0-0)  
82

83 Motion/Second/Carried (Vincent/Wrenn) to adopt proposed draft Zoning Ordinance  
84 amendments to implement parking maximums with modifications to 1) exempt projects with a  
85 majority of deed-restricted affordable units; 2) exempt projects in the Hillside Overlay on  
86 streets that are less than 26 feet in width; and 3) exempt projects aimed to households with  
87 children or first time homeowners.

88  
89 Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None.  
90 Absent: Beach and Schildt. (7-0-0-2)  
91

92 Motion/Second/Carried (Wrenn/Kapla) to adopt proposed draft Zoning Ordinance  
93 amendments to implement transportation demand management (TDM) requirements with  
94 modifications to 1) require 1 monthly transit pass per bedroom, with a maximum of 2 passes  
95 for projects with less than 100 units; 2) require 1 transit pass per bedroom for projects with  
96 100 units or more; and 3) exclude, in all zoning districts, new projects of 5 or more units from  
97 the Residential Preferential Parking (RPP) program.

98  
99 Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, and Wrenn. Noes: Wiblin. Abstain: None.  
100 Absent: Beach and Schildt. (6-1-0-2)  
101

102 Motion/Second/Carried (Kapla/Wiblin) to adopt proposed draft Zoning Ordinance amendments  
103 to accept technical edits and minor changes to the Variance Chapter.

104  
105 Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None.  
106 Absent: Beach and Schildt. (7-0-0-2)  
107  
108

109 **Public Comments: 8**

110 **10. Discussion: Planning Commission Workplan**

111 Staff gave an overview of agenda materials.

112 **Public Comments: 0**

113 **11. Discussion: May 20, 2020 Special Meeting**

114 Planning Commission discussed potential dates for a Special Meeting to discuss the Adeline  
115 Corridor Specific Plan. Staff will poll Commissioners and announce final date via email.

116 **Public Comments: 0**

117 Motion/Second/Carried (Kapla/Wiblin) to close the public hearing at 10:17pm.

118

119 Ayes: Kapla, Krpata, Lacey, Martinot, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None.

120 Absent: Beach and Schildt. (7-0-0-2)

121

122 **The meeting was adjourned at 10:33pm**

123 **Commissioners in attendance: 9**

124 **Members in the public in attendance: 13**

125 **Public Speakers: 8 speakers**

126 **Length of the meeting: 3 hours and 31 minutes**





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

## **STAFF REPORT**

**DATE:** July 1, 2020

**TO:** Members of the Planning Commission

**FROM:** Paola Boylan, Assistant Planner

**SUBJECT:** Public Hearing to Consider Amendments to the Home Occupation Section of the Berkeley Municipal Code, BMC Chapter 23C.16

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## **RECOMMENDATION**

Staff recommends Planning Commission conduct a public hearing and, upon conclusion, recommend Zoning Ordinance amendments for Home Occupations to City Council.

## **BACKGROUND**

Home Occupations are small-scale businesses conducted on a residential property as an incidental or secondary land use by the resident of the home (may be in a single-family or multi-dwelling building). Chapter 23C.16 of the BMC (see Attachment 2) contains a stand-alone set of regulations that apply in all zoning districts citywide and address a number of factors intended to accommodate persons wishing to conduct small businesses from home while ensuring neighborhood compatibility and the continuation of a primarily residential use. Currently, there are three classifications of Home Occupation (HO) that include differing limitations and permit requirements:

1. Low-Impact
2. Moderate-Impact
3. Moderate-Impact - Teaching-Related

On December 6, 2011, City Council referred to the City Manager consideration of a set of amendments to reduce the levels of discretion for Moderate-Impact HOs and streamline the permitting process for all HOs (see Attachment 3). In 2018, Planning Commission considered this referral, ultimately holding a public hearing and approving amendments to recommend to City Council. Unfortunately, due to a reduction in staffing and the introduction of higher priority referrals from City Council, progress on this referral stalled.

The 2018 amendments were grouped into eight subject areas including level of discretion, number of customer visits, location on a lot, and handling of goods, along with overall

ordinance organization and structure. In the past two years, new State laws governing Accessory Dwelling Units (ADUs) and gig workers (e.g. independent drivers that are based at their homes) prompted staff to review the 2018 amendments for consistency of generally allowable uses and needs of the community. Staff identified opportunities to improve language clarity, consistency, and organization, all of which are explained in the Discussion section of this report.

The 2018 proposed amendments are summarized in Table 1 and then explained below. Existing zoning regulations are shown in regular text; Planning Commission’s proposed amendments from 2018 are shown in underline and strikeout.

**Table 1: Summary of Recommended 2018 HO Zoning Ordinance Amendments**

HO Category	Level of Discretion <sup>1</sup>	Customer Visits	Non-Resident Employee
Low-Impact	ZC	<del>Not Allowed</del> <u>Up-to five visits per day, with no more than one customer at a time</u>	Not Allowed
Moderate-Impact	<del>UP(PH)</del> <u>AUP</u>	<del>Allowed</del> <u>Six or more visits per day, with no more than four clients or customers at a time</u>	<del>Not Allowed</del> <u>One Allowed</u>
<del>Teaching-Related</del>	AUP	<del>Four or fewer students allowed at a time</del>	Not Allowed

**2018 Proposed Zoning Ordinance Amendments:**

**1. Customer/Client Visits:**

- Allow a Low-Impact HO to have no more than five visits per day, with no more than one client at a time, with issuance of a Zoning Certificate. *(Modify Section 23C.16.020)*
- Allow a Moderate-Impact HO to have six or more visits per day, with no more than four clients at a time, with issuance of an Administrative Use Permit. *(Modify Section 23C.16.030.B)*
- Remove Teaching-Related HO as a HO category. *(Modify Section 23C.16.030.A)*

**2. Accessory Buildings:**

- Allow HOs in Accessory Buildings. *(Modify Section 23C.16.010)*
- Apply square footage limitation for HOs (total area and percentage of the dwelling) to Accessory Buildings. *(Modify Section 23C.16.010)*

<sup>1</sup> ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

**3. On-site Goods:**

- Allow business-related activities, including handling, processing, storage, and transport of goods on-site. Do not allow these activities outdoors. *(Modify Section 23C.16.010)*

**4. Visiting Hours:**

- Establish hours of operation from 10am - 8pm for customer/client visits for all HOs. *(Modify Sections 23C.16.010 and 030)*

**5. Non-resident Employees:**

- Allow only residents of the subject property to conduct HO business-related activities onsite. *(Modify Section 23C.16.010)*
- Allow one non-resident individual engaged in business-related activities onsite for Moderate-Impact HOs. *(Modify Section 23C.16.020.B)*

**6. Advertising Signs:**

- Add language to prohibit on-site signs advertising the HO. *(Modify Section 23C.16.010)*

**7. Restructure and Reformat Chapter:**

- Consolidate repetitive language. *(Modify Sections 23C.16.010, 020, and 030)*
- Remove sections “Complaints and Imposition of Conditions,” “Home Occupations in Rental Unit,” “Medical Cannabis Residential Cultivation.” *(Modify Sections 23C.16.040, 050, and 060)*
- Consolidate all “Findings” for HOs to the Home Occupations chapter. *(Modify Sections 23E.84.090.G and 23C.16.030)*

**8. Uses Permitted Tables:**

- Modify the “Accessory Uses and Structures” sections of the Uses Permitted tables in all Residential districts to remove the Teaching-related HO category and revise the level of discretion for Moderate HOs from UP(PH) to AUP. *(Modify Sections 23D.16.030, 23D.20.030, 23D.24.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030)*
- Modify the “Residential and Related Uses” sections of the Uses Permitted tables in the C-W and the MU-R districts to remove the Teaching-related HO category and revise the level of discretion for Moderate-Impact HOs from UP(PH) to AUP. *(Modify Sections 23E.64.030 and 23E.84.030)*

For more information on these previously-proposed Zoning Ordinance amendments, see the 2018 Planning Commission Staff Report and Meeting Minutes in Attachments 4 and 5.

## **DISCUSSION**

This section explains modifications and additions to the previously-recommended 2018 Zoning Ordinance amendments that refine text and chapter structure, and address HOs in ADUs. Full text of the updated Zoning Ordinance amendments is provided in Attachment 6. Planning Commission is asked to discuss these modifications to the Zoning Ordinance and provide a recommendation to City Council.

Updates to Zoning Ordinance amendments are presented in three categories:

1. Clarify and Refine Proposed Text of “General Requirements”
2. Restructure and Reformat the Chapter
3. Update the Definition of Home Occupation

### **1. Clarify and Refine Proposed Text of “General Requirements”**

#### Proposed Change:

- Refine text language to clarify use is permitted in ADUs. (*Modify Section 23C.16.010.3*)
- Clarify HO size restrictions to offer the maximum amount of operating space within the size limitations. (*Modify Section 23C.16.010.4*)
- Remove language that restricts non-residents from conducting HO related-activities. (*Modify Section 23C.16.010.5*)
- Clarify how hazardous material are defined by the City of Berkeley (*Modify Section 23C.16.010.8*)

#### Staff Rationale:

Proposed updates provide clearer guidance for those seeking to operate a HO in Berkeley. Recommended changes clarify how to interpret size restrictions, reference code sections that define hazardous materials, and refine ordinance language. Additionally, revised text mirrors language used in the HO definition to maintain consistency within the Berkeley Municipal Code. This includes specifying that HOs are allowed in ADUs and that a non-resident employee can conduct business-related activities onsite, subject to permit specifications.

### **2. Restructure and Reformat Chapter**

#### Proposed Change:

- Move the description of HO classifications from HO chapter to the Definitions chapter. (*Modify Section 23C.16.020 and 23F.04.010*)
- Rename Section 23C.16.020 to “Permits Required” (*Modify Section 23C.16.020*)

#### Staff Rationale:

Moving descriptions of HOs to the Definitions section is consistent with existing Zoning Ordinance structure, and in turn provides a more intuitive location for such information. Section 23C.16.020 is renamed to “Permits Required” to reflect Section content.

### 3. Update HO Definition

#### Proposed Change:

- Amend the definition of “Home Occupation” to specify that they can operate in Accessory Buildings and Accessory Dwelling Units, and to include distinctions between Low–Impact and Moderate–Impact HOs. (*Modify Section 23F.04.010*)
- Remove the definition of “Home Occupation, Teaching-Related” (*Modify Section 23F.04.010*)

#### Staff Rationale:

Defining the allowable locations and clarifying the distinctions in classification within the definition of HOs will facilitate implementation of the Zoning Ordinance. The definition for Teaching-Related HO can be removed because that use can be regulated as either Low- or Moderate-Impact, depending on the number and type of customer/client visits. The proposed changes maintain consistent discretion between the different classifications of HOs and appropriately match level of discretion to level of impact.

#### **NEXT STEPS**

1. Conduct a public hearing.
2. Recommend for adoption by the City Council zoning language amendments to the aforementioned sections.

#### **ATTACHMENTS**

1. Public Hearing Notice
2. Berkeley Municipal Code Chapter 23C.16
3. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
4. Planning Commission Staff Report – November 7, 2018
5. Planning Commission Meeting Minutes - November 7, 2018
6. Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts





# PLANNING COMMISSION

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## NOTICE OF PUBLIC HEARING

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WEDNESDAY, JULY 1, 2020, 7:00 PM

**Amendments to the Home Occupation Ordinance: Allow for Customer/Client Visits, Allow for Home Occupations in Accessory Buildings and Accessory Dwelling Units, Allow for Handling, Processing and Storage of Goods within the Building, and Restructure the Home Occupation Ordinance Including Clarifications of Terms and Regulations.**

**Berkeley Municipal Code (BMC) Chapters 23C.16, 23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.64, 23E.84, and 23F.04**

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, July 1, 2020, beginning at 7:00 PM. The hearing will be conducted via Zoom** - see the Agenda for details, which can be found here: ([https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)).

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

**PROJECT DESCRIPTION:** The proposed amendments to Berkeley's Zoning Ordinance (Title 23) respond to a December 6, 2011 referral from City Council to consider reducing the level of discretion for Moderate-Impact Home Occupations. The amendments allow for customer/client visits for all levels of Home Occupations; allow Home Occupations in Accessory Buildings; reclassify Teaching-Related Home Occupations as Moderate-Impact Home Occupations; allow for handling, processing and storage of goods on-site; and establish hours of operations for Home Occupations. Amendments simplify the structure and language of the Home Occupation Ordinance.

Full text of the draft Zoning Ordinance amendments can be found on the Planning Commission's homepage: ([https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)).

Changes to be considered are summarized below and apply to the Home Occupation Ordinance (BMC 23C.16), all Residential districts, the West Berkeley Commercial district (C-W), the Mixed Use-Residential district (MU-R), and the Definitions Chapter (23F.04):

- Modify permit requirements for Low-Impact/Moderate-Impact Home Occupations with respect to number of customer/client visits;
- Allow Home Occupations in Accessory Buildings and Accessory Dwelling Units;
- Allow for handling, processing and storage of good on-site (but not outdoors);
- Establish hours of operation as 10am - 8pm for customer/client visits;
- Clarify and refine proposed text of “General Requirements for Home Occupations”;
- Restructure and reformat the Chapter; and
- Update the Home Occupation definition.

**LOCATION:** Affected districts include: R-1, R-1A, ES-R, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-W, and MU-R. The zoning map is available online:

[https://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_General/Zoning%20Map%2036x36%20050120.pdf](https://www.cityofberkeley.info/uploadedFiles/IT/Level_3_General/Zoning%20Map%2036x36%20050120.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 the Home Occupation Ordinance and Residential districts would not have significant effects on the environment because they would continue to allow only small scale activities within existing structures and would be regulated to include performance standards to protect the environment and local health, safety and welfare.

## **PUBLIC COMMENT**

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All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Comments may be made verbally at the public hearing and in writing before the hearing. Written comments concerning this project should be directed to:

Planning Commission  
**Alene Pearson, Secretary**  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

Fax: (510) 981-7489  
E-mail: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

Correspondence received by 12 noon, eight days before this public hearing, will be provided with the agenda materials provided to the Commission. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies.

Correspondence received after this deadline will be conveyed to the Commission in the following manner:



- Correspondence received by 12 noon two days before this public hearing, will be conveyed to the Commission in a Supplemental Communication, which will be released around noon one day before the public hearing; or
- Correspondence received after 12 noon two days before this public hearing will be saved in the project administrative record.

Note: It will not be possible to submit written comments at the meeting.

### **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 **Alene Pearson**, at (510) 981-7489, or **[apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)**. Past and future agendas are also available on the Internet at: [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)



## Chapter 23C.16 HOME OCCUPATIONS

Sections:

- [23C.16.010](#) Home Occupations
- [23C.16.020](#) Low Impact Home Occupations Permitted by Right Subject to Business License
- [23C.16.030](#) Moderate Impact Home Occupations Subject to Use Permit
- [23C.16.040](#) Complaints and Imposition of Conditions
- [23C.16.050](#) Home Occupation in Rental Unit
- [23C.16.060](#) Medical Cannabis Residential Cultivation

### 23C.16.010 Home Occupations

- A. The establishment of Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a Dwelling Unit, but rather shall be considered a lawful Incidental Use thereof.
- B. No Home Occupation which involves a Firearm/Munitions Business may be allowed.
- C. No Home Occupation which involves customer visits may be allowed in the ES-R District. (Ord. 6478-NS § 4 (part), 1999)

### 23C.16.020 Low Impact Home Occupations Permitted by Right Subject to Business License

A Home Occupation which meets all of the following conditions shall be allowed by right in any Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter [9.04](#).

- A. Such Home Occupations must:
  - 1. Be conducted entirely within the dwelling unit or group living accommodation room;
  - 2. Occupy less than four hundred (400) square feet and less than twenty percent (20%) of the dwelling unit or group living accommodation room;
- B. Such home occupations may not:
  - 1. Involve customer visits to the subject premises;
  - 2. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
  - 3. Involve hazardous materials or processes; or
  - 4. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises. (Ord. 6478-NS § 4 (part), 1999)

### **23C.16.030 Moderate Impact Home Occupations Subject to Use Permit**

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter [9.04](#).

1. Such Home Occupations must:
  - a. Be conducted entirely within the dwelling unit or group living accommodation room;
  - b. Operate within the hours of 10 a.m. and 10 p.m.; and
  - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:
  - a. Involve more than four students at a time;
  - b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
  - c. Involve hazardous materials, or processes; or
  - d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter [9.04](#). (Ord. 6909-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

### **23C.16.040 Complaints and Imposition of Conditions**

A. Complaints regarding low-impact home occupations may be made to the Zoning Officer for review and enforcement action.

B. If written complaints that include factual information on detrimental effects to the neighborhood from a Home Occupation are received, the Board may schedule a public hearing to review the Home Occupation. After such hearing the Board may approve a Use Permit to impose conditions upon the Home Occupation as may be necessary to prevent detrimental effects or it may initiate revocation proceedings. (Ord. 6478-NS § 4 (part), 1999)

### **23C.16.050 Home Occupation in Rental Unit**

Any application for a Home Occupation may be filed by a lessee in possession of the property without the consent of the owner of record of the legal title and the application may be accepted without such owner's signature. In the case of a home occupation which requires a Use Permit, the owner shall be given notice of the proposed home occupation, in conformance with Section [23B.32.020.D](#). (Ord. 6478-NS § 4 (part), 1999)

### **23C.16.060 Medical Cannabis Residential Cultivation**

No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property. (Ord. 7068-NS § 4 (part), 12/08/08)

#### **The Berkeley Municipal Code is current through Ordinance 7704-NS, passed May 26, 2020.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofberkeley.info/Home.aspx>  
Telephone number: (510) 981-6900  
[Code Publishing Company](http://www.codepublishing.com)





Linda Maio  
District 1

CONSENT CALENDAR  
December 6, 2011

To: Honorable Mayor and Members of the City Council  
From: Councilmember Linda Maio  
Subject: Classify Home Occupation Activities Receiving Five or Fewer Visits as Moderate Impact Home Operation

RECOMMENDATION

Refer to the City Manager that the zoning code for Moderate Impact Home Operation (Moderate Impact HO) be amended to include home occupation activities receiving five or fewer visits weekly, requiring an AUP rather than a Use Permit with public hearing.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Years ago, the City changed the regulations to allow teaching, up to four students at a time, with a Moderate Impact HO, which is an AUP, rather than a Use Permit with public hearing. Zoning Code section 23C.16.030 reads as follows, and is applicable to home occupation activities receiving five or fewer visits weekly:

**23C.16.030 Moderate Impact Home Occupations Subject to Use Permit**

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
  - a. Be conducted entirely within the dwelling unit or group living accommodation room;
  - b. Operate within the hours of 10 a.m. and 10 p.m.; and
  - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:

Classify Home Occupation Activities Receiving Five or Fewer  
Visits as Moderate Impact Home Operation

CONSENT  
CALENDAR  
December 6, 2011

- a. Involve more than four students at a time;
- b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
- c. Involve hazardous materials, or processes; or
- d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

**B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.**

Given that we permit 4 students at a time, which could amount to many more per day, enabling 5 visits or fewer per day with an HO designation, for other home occupation visitors seems eminently reasonable.

CONTACT PERSON

Linda Maio

District 1

(510) 981-7110





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: November 7, 2018

TO: Members of the Planning Commission

FROM: Sydney Stephenson, Assistant Planner

SUBJECT: Public Hearing to Consider Amendments to the Home Occupation Chapter (BMC 23C.16)

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### SUMMARY

The proposed amendments to Berkeley Municipal Code (BMC) Chapter 23C.16 – *Home Occupations* respond to a City Council referral from December 6, 2011, as well as, additional modifications identified by staff. In September, 2018, the Planning Commission discussed the proposed approach and requested staff draft Zoning Ordinance amendments for a Public Hearing (see Attachment 1: Public Hearing Notice Home Occupation Amendments). In this report the Background section explains the existing regulations and the City Council referral. The Discussion section presents the proposed amendments and the staff's rationale. The Planning Commission is asked to discuss the proposed amendments and provide a recommendation to the City Council (Council).

### BACKGROUND

Home Occupations are small-scale businesses conducted on a residential property as an incidental or secondary land use. Presently, the Zoning Ordinance classifies Home Occupations (HOs) into three categories:

HO Category	Level of Discretion <sup>1</sup>	Customer Visits	Storage and/or Handling of Goods
Low-Impact	ZC	Not Allowed	Not Allowed
Moderate-Impact	UP(PH)	Allowed	Allowed
Teaching-Related	AUP	Four or fewer students allowed at a time	Not Allowed

Regardless of category, all HOs must:

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<sup>1</sup> ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

1. Be conducted entirely within the dwelling unit or group living accommodation room.
2. Occupy less than 20% or 400 square feet of the unit.
3. Not generate offensive noise, orders or other nuisances.
4. Not handle or generate hazardous materials.

On December 6, 2011, City Council (Council) referred to the City Manager a set of amendments that reduce the level of discretion for Moderate Impact Home Occupations (see Attachment 2). This referral proposes to amend BMC Section 23C.16.030 to allow five or fewer customer visits per day for Moderate Impact HOs with an AUP; thereby creating a similar discretionary path for Teaching-Related and Moderate Impact HOs that have limited customer visits.

At the September 5, 2018 Planning Commission (PC) meeting, staff proposed modifications to the Home Occupations chapters (23C.16) to respond to the referral (see Attachment 3 for Staff Report). The Planning Commission requested staff draft Zoning Ordinance amendments that address the level of discretion, number of customer visits, location of HO operations, handling of goods, and overall ordinance organization and structure. While drafting the Zoning Ordinance amendments, staff identified additional modifications to the Home Occupation chapter that are often addressed through Zoning Ordinance interpretations. These include hours of operation, non-resident employees, and advertising. Details are provided in the following section.

## **DISCUSSION**

Draft Zoning Ordinance amendments can be found in Attachment 4 (Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations and Use Tables in Applicable Zoning Districts). Amendments are grouped into eight subject areas – each one providing a list of proposed changes and a discussion of staff rationale. The Planning Commission is asked to discuss and consider these Zoning Ordinance amendments.

### **1. Customer/Client Visits:**

#### Proposed Changes:

- 1) Allow a Low Impact HO no more than five visits per day, with no more than one client at a time, with an issuance of a Zoning Certificate. *(Modify Section 23C.16.020)*
- 2) Allow a Moderate Impact HO six or more visits per day, with no more than four clients at a time, with an issuance of an Administrative Use Permit. *(Modify Section 23C.16.030.B)*
- 3) Remove Teaching-Related HO as a HO category. *(Modify Section 23C.16.030.A)*

#### Staff Rationale:

The proposed changes reflect the current business needs and operations in Berkeley. Based on anecdotes and personal experience, staff believes that many existing Low Impact HOs receive customer/client visits. The lack of complaints associated with these business operations suggests a limited number of visits are appropriate for Low Impact

HOs. The proposed changes allow a limited number of visits for a Low Impact HO with a Zoning Certificate.

At this time, there have been no UP(PH) applications submitted for Moderate Impact HOs. Review of the permit application history for HOs raises the question of whether Berkeley's HO thresholds are appropriate to allow legal operation of home businesses and whether the City's regulations reflect common home business models that exist in the Bay Area. Thus, the proposed change lowers the level of discretion for a Moderate Impact HO from a Use Permit to an Administrative Use Permit (AUP). As discussed below, the AUP for a Moderate Impact HO will be subject to specific Findings to address parking and traffic impacts.

With the above changes, the Teaching-Related HO can be removed because this use can be regulated as either Low Impact or Moderate Impact, depending on the number and type of customer/client visits. The proposed changes would maintain consistent discretion between the different categories of HOs and appropriately matches level of discretion to level of impact.

## **2. Accessory Buildings:**

### **Proposed Changes:**

- 1) Allow HOs in Accessory Buildings. (*Modify Section 23C.16.010*)
- 2) Apply square footage limitation for HOs to Accessory Buildings. (*Modify Section 23C.16.010*)

### **Staff Rationale:**

In order to align with current best practices in other cities and to allow all Berkeley HOs to operate legally, staff recommends HOs be allowed in Accessory Buildings. This change will benefit many business owners. For example, it is common for artists to have their studios in Accessory Buildings (detached from the main dwelling). Under existing regulations these artists cannot hold art classes within their studios; however, under the proposed regulations, these types of activities will be legal.

Staff believes allowing HOs in Accessory Buildings would maintain consistency with the definition of an Accessory Building<sup>2</sup>. Since HOs are considered an Incidental Use, allowing HOs in Accessory Buildings would be consistent with existing definitions. To maintain the incidental nature of a HO, the square footage limitation of 400 square feet or 20% of the building that the HO occupies would apply to Accessory Buildings.

## **3. On-site Goods:**

### **Proposed Changes:**

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<sup>2</sup> Accessory Building definition per BMC 23F.04.010: A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

- 1) Allow business-related activities, including handling, processing, storage, and transport of goods on-site. Do not allow these activities outdoors. (*Modify Section 23C.16.010*)

**Staff Rationale:**

Currently, Berkeley's practice is to allow HOs store and handle goods on a case by case basis, even though the Home Occupations chapter precludes the "storage, service, repair, handling or transport of good or products on or at the subject premises." The HO Ordinance does not provide guidance on what constitutes a "good or product." Many home-based businesses involve production and transport of goods, where the quality or size of the product is such that the HO will not have significant impact on the surrounding neighborhood. Examples of these HO businesses include: graphic artist/photographer printing from a computer; painter/craftsperson preparing small-scale artwork; accountant/attorney/consultant preparing reports and documents; and preparation of cottage foods.

The intent of the HO provisions was not to require a Use Permit for any and all "products" and activities at residential locations, but rather to prohibit those which would have the potential for significant neighborhood impact. After researching other jurisdictions' regulations and reviewing approved Low Impact HOs, staff determined that the majority of home businesses operate with "products" and do impact neighborhoods. Therefore, instead of requiring a staff interpretation of the Home Occupation chapter, staff believes that storage and handling (and other related activities) of goods and products within the area of the HO should be allowed. Staff also recommends prohibiting outdoor storage of goods and products.

**4. Visiting Hours:**

**Proposed Changes:**

- 1) Establish hours of 10am-8pm for customer/clients visits for all HOs. (*Modify Sections 23C.16.010 and 030*)

**Staff Rationale:**

Customer/client visits associated with Teaching-related HOs are currently set at 10am to 10pm. The proposed Zoning Ordinance amendment expands allowable customer/client visits to all HOs and resets the hours to a neighborhood friendly standard of 10am to 8pm. These hours are intended to reduce impacts to neighbors.

**5. Non-resident Employees:**

**Proposed Changes:**

- 1) Allow only residents of the subject property to conduct HO business-related activities onsite. (*Modify Section 23C.16.010*)

**Staff Rationale:**

Section 23F.04.010 (Definitions) states that HOs must be “operated only by the inhabitants of the subject residence.” Staff proposes reiterating this requirement in the HO Chapter for clarity and consistency.

## **6. Advertising Signs:**

### Proposed Changes:

- 1) Add language to prohibit on-site signs advertising the HO. (*Modify Section 23C.16.010*)

### Staff Rationale:

Best practices from other cities (including Santa Monica, Walnut Creek, Palo Alto, Oakland, and Pasadena) support prohibitions of on-site signs that advertise the HO business.

## **7. Restructure and Reformat Chapter:**

### Proposed Changes:

- 1) Consolidate repetitive language. (*Modify Sections 23C.16.010, 020, and 030*)
- 2) Remove sections “Complaints and Imposition of Conditions,” “Home Occupations in Rental Unit,” “Medical Cannabis Residential Cultivation.” (*Modify Sections 23C.16.040, 050, and 060*)
- 3) Move all “Findings” for HOs to the Home Occupations chapter. (*Modify Sections 23E.84.090.G and 23C.16.030*)

### Staff Rationale:

Currently, the Home Occupations chapter (BMC 23C.16) is broken into six sections. The first section (010) lists the requirements applicable to all HOs. The second two sections (020 and 030) discuss the requirements for low-impact HOs and moderate-impact HOs (including teaching-related HOs). The last three sections (040, 050, and 060) include language regarding complaints, rentals, and medical cannabis residential cultivation.

Staff proposes to take the opportunity to update the format and language of the Home Occupation Ordinance to provide more comprehensible regulations to the public. The reformatting would include consolidating repeated language, removing unnecessary language, and restructuring the format of the chapter as discussed below.

- 1) Currently, HO requirements regarding the square footage limit, prohibiting the use hazardous materials and processes, and prohibiting the creation of offensive and objectionable noise, vibration, etc. are located in both the Low Impact HO (020) and the Moderate Impact HO sections (030). Thus, staff proposes moving the repetitive language to section 010, which will become “General Requirements for Home Occupations.”
- 2) Staff also proposes removing sections “Complaints and Imposition of Conditions,” “Home Occupations in Rental Unit,” “Medical Cannabis Residential Cultivation.” This decision was arrived at after discussing the chapter with multiple staff

members. The “Complaints and Imposition of Conditions” section (040) can be removed because it contains language regarding how to deal with complaints and issues regarding Zoning Certificates and Use Permits or AUPs. This language is unnecessary because the procedure to handle issues with Zoning Certificates is already stated in the Zoning Conformance Review chapter, in section 23B.20.060.B. In addition, the process to deal with issues or complaints for Use Permits or AUPs is stated in Chapters 23B.28 and 23B.32. The “Home Occupations in Rental Unit” section (050) can be removed because it contains notification requirements for use permits which can be found in other chapters of the Zoning Ordinance. However, the first sentence of the section regarding allowance of HOs in rental units will be retained and moved to the “General Requirements for Home Occupations” section. The “Medical Cannabis Residential Cultivation” section (060) can be removed because language regarding personal cultivation of cannabis (medicinal and adult use) are stated in Title 12 of the Berkeley Municipal Code.

- 3) Currently, the “Findings” section (090) of the MU-R district contains language regarding specific findings for HOs in this district, these findings are found nowhere else in the Zoning Ordinance. Staff believes that these findings are important to make in the future for Administrative Use Permits allowing Moderate Impact HOs because they relate to parking and traffic impacts. Thus, staff proposes moving these findings to a new section of the Home Occupations chapter.

## **8. Uses Permitted Tables:**

### **Proposed Changes:**

- 1) Modify the “Accessory Uses and Structures” sections of the Uses Permitted tables in all Residential districts to remove the Teaching-related HO category and revise the level of discretion for Moderate HOs from UP(PH) to AUP. (*Modify Sections 23D.16.030, 23D.20.030, 23D.24.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030*)
- 2) Modify the “Residential and Related Uses” sections of the Uses Permitted tables in the C-W and the MU-R districts to remove the Teaching-related HO category and revise the level of discretion for Moderate Impact HOs from UP(PH) to AUP. (*Modify Sections 23E.64.030 and 23E.84.030*)

### **Staff Rationale:**

Since the proposed amendments change the level of discretion for Moderate Impact HOs and removes the category of Teaching-related HOs, the Uses Permitted tables in the affected districts (all Residential districts and C-W and MU-R) must be revised.

## **NEXT STEPS**

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 Zoning Ordinance amendments regarding HOs through a vote of the Planning Commission.

**ATTACHMENTS**

1. Public Hearing Notice
2. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
3. Planning Commission Staff Report – September 5, 2018
4. Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations and Use Tables in Applicable Zoning Districts







# PLANNING COMMISSION

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## NOTICE OF PUBLIC HEARING

### **Amendments to the Home Occupation Ordinance: Allow for Customer/Client Visits, Allow for Home Occupations in Accessory Buildings and Accessory Dwelling Units, Allow for Handling, Processing and Storage of Goods within the Building, and Restructure Home Occupation Ordinance.**

**Berkeley Municipal Code (BMC) Chapters 23C.16, 23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.64, and 23E.84**

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, November 7, 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:** The proposed amendments to Berkeley's Zoning Ordinance (Title 23) respond to City Council's December 6, 2011, Referral to reduce the level of discretion for Moderate Impact Home Occupations. The amendments allow for customer/client visits for all levels of Home Occupations; allow Home Occupations in Accessory Buildings; reclassify Teaching-Related Home Occupations as Moderate Impact Home Occupations; allow for handling, processing and storage of goods on-site; and establish hours of operations for Home Occupations. Amendments simplify the structure and language of the Home Occupation Ordinance.

Full text of Zoning Ordinance Amendments can be found on the Planning Commission's homepage ([https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)). Changes to be considered apply to the Home Occupation Ordinance (BMC 23C.16), all Residential districts, and the West Berkeley Commercial district (C-W) and Mixed Use-Residential district (MU-R), and are summarized below (the Planning Commission may further amend the language of the proposed ordinance):

- Modify permit requirements for Low Impact/Moderate Impact Home Occupations with respect to number of customer/client visits;
- Allow Home Occupations in Accessory Buildings;
- Allow for handling, processing and storage of good on-site (but not outdoors); and
- Establish hours of 8am-8pm for customer/client visits.

**LOCATION:** Affected districts include: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-W, and MU-R. The zoning map is available online: [http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level\\_3\\_-\\_General/Zoning%20Map%2036x36%2020050120.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf)

**Item 10 - Attachment 1  
Planning Commission  
November 7, 2018**

ZO AMENDMENTS TO HOME OCCUPATION ORDINANCE  
Page 2 of 2

NOTICE OF PUBLIC HEARING  
Posted: October 26, 2018

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**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 the Home Occupation Ordinance and Residential districts would not have significant effects on the environment because any proposed discretionary project would be subject to independent CEQA review.

**PUBLIC COMMENT**

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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  
**Alene Pearson, Secretary**  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

Fax: (510) 981-7489  
E-mail: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

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 8.5x11 inches.

**COMMUNICATION ACCESS**

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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**

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Questions should be directed to **Alene Pearson**, at (510) 981-7489, or [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info). Past and future agendas are also available on the Internet at: [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

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**26**

Linda Maio  
District 1

CONSENT CALENDAR  
December 6, 2011

To: Honorable Mayor and Members of the City Council  
From: Councilmember Linda Maio  
Subject: Classify Home Occupation Activities Receiving Five or Fewer Visits as  
Moderate Impact Home Operation

RECOMMENDATION

Refer to the City Manager that the zoning code for Moderate Impact Home Operation (Moderate Impact HO) be amended to include home occupation activities receiving five or fewer visits weekly, requiring an AUP rather than a Use Permit with public hearing.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Years ago, the City changed the regulations to allow teaching, up to four students at a time, with a Moderate Impact HO, which is an AUP, rather than a Use Permit with public hearing. Zoning Code section 23C.16.030 reads as follows, and is applicable to home occupation activities receiving five or fewer visits weekly:

**23C.16.030 Moderate Impact Home Occupations Subject to Use Permit**

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
  - a. Be conducted entirely within the dwelling unit or group living accommodation room;
  - b. Operate within the hours of 10 a.m. and 10 p.m.; and
  - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:

**Item 10 - Attachment 2  
Planning Commission  
November 7, 2018**

**Page 2 of 2**

Classify Home Occupation Activities Receiving Five or Fewer Visits  
as Moderate Impact Home Operation

CONSENT CALENDAR  
December 6, 2011

- a. Involve more than four students at a time;
- b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
- c. Involve hazardous materials, or processes; or
- d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

**B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing**, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

Given that we permit 4 students at a time, which could amount to many more per day, enabling 5 visits or fewer per day with an HO designation, for other home occupation visitors seems eminently reasonable.

CONTACT PERSON  
Linda Maio

District 1

(510) 981-7110



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

**STAFF REPORT**

DATE: September 5, 2018  
TO: Members of the Planning Commission  
FROM: Sydney Stephenson, Assistant Planner  
SUBJECT: Referral Response: Amending Moderate Impact Home Occupation Regulations

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**INTRODUCTION**

On December 6, 2011, City Council (Council) referred to the City Manager a set of amendments that reduce the level of discretion for Moderate Impact Home Occupations (see Attachment 1). In researching this referral, staff identified additional modifications to Berkeley Municipal Code (BMC) Chapter 23C.16 (Home Occupations) that better reflect the current practices and needs of home-businesses operating in Berkeley. Questions regarding potential amendments are presented in the Discussion section for the Planning Commission to consider.

**BACKGROUND**

Home occupations are small-scale businesses conducted on a residential property as an incidental or secondary land use. Presently, the Zoning Ordinance classifies home occupations (HOs) into three categories:

HO Category	Level of Discretion <sup>1</sup>	Customer Visits	Storage and/or Handling of Goods
Low-Impact	ZC	Not Allowed	Not Allowed
Moderate-Impact	UP(PH)	Allowed	Allowed
Teaching-Related	AUP	Four or fewer students allowed at a time	Not Allowed

Regardless of category, all HOs must:

1. Be conducted entirely within the dwelling unit or group living accommodation room.
2. Occupy less than 20% or 400 square feet of the unit.

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<sup>1</sup> ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

3. Not generate offensive noise, orders or other nuisances.
4. Not handle or generate hazardous materials.

### Referral Summary

The referral in this report intends to introduce more consistent regulations surrounding customer visits to HOs. Currently HOs that do not involve customer visits are classified as low-impact and can be established with a ZC. HOs that involve customer visits are classified as moderate-impact and require a UP(PH), *unless they are teaching-related*. Teaching-related HOs require less discretion – an AUP – and allow four students visitors per lesson. This referral proposes to amend BMC Section 23C.16.030 to allow five or fewer customer visits per day for moderate impact HOs with an AUP; thereby creating a similar discretionary path for teaching-related and moderate impact HOs that have limited customer visits.

### Zoning Regulation History

Prior to the Zoning Ordinance update in 1999, moderate-impact HOs that involved non-resident employees, customer visits, or storage of products on premises were allowed with an AUP. Staff and the Planning Commission recommended maintaining this level of discretion; however, the Zoning Adjustments Board proposed requiring a UP(PH) and Council approved this proposal (see Attachment 2). The most recent revision to this chapter was in 2006, when the teaching-related HO regulations were added.

### Home Occupation Permit Application History:

Since January of 2018, the City has approved approximately 116 Zoning Certificates for low-impact HOs. Low-impact HOs are mostly for home office businesses, but also include other businesses like dog walking, cottage foods, graphic designing, jewelry-making, and life-coaching. Since 2006, the City has only received six AUPs for teaching-related HOs, two of which were submitted this year. At this time, there have been no UP(PH) applications submitted for moderate-impact HOs. Staff believes that permit activity might inaccurately represent Berkeley's home business inventory and operations.

Review of permit application history for HOs raises the questions of whether Berkeley's HO thresholds are appropriate to allow legal operation of home businesses and whether the City's regulations reflect common home business models seen in the Bay Area and the rest of the state.

### Home Occupations in Other Jurisdictions:

Attachment 3 provides a summary of current HO regulations for Santa Monica, Walnut Creek, Palo Alto, Oakland, and Pasadena. As seen in Attachment 3, Berkeley's regulations are less permissive with respect to HO visits, HO location, and storage and handling of goods. For example, the majority of other jurisdictions allow HO customer/client visits by-right, whereas Berkeley requires an AUP or UP(PH). Most other jurisdictions allow HOs to operate out of Accessory Buildings, whereas Berkeley only permits HOs dwelling units and group living accommodations. Finally, most jurisdictions

allow storage and handling of goods indoors, whereas Berkeley's ordinance prohibits the storage and/or handling of goods on-site.

The discussion section of the report identifies the Zoning Ordinance amendments that the 2011 Council referral addresses, as well as, other possible amendments that meet the needs of current home business models and reflects best practices seen in other cities.

## **DISCUSSION**

The 2011 Council referral requested that Moderate-Impact Home Occupations with five or fewer client/customer visits per day be allowed with an AUP. This also means that HOs with more than five visits or storage and handling of goods on-site would continue to require a UP(PH).

Since adoption of the Home Occupation chapter, in 1999, the number of home-based workers increased from 7.0% in 1997 to 9.5% in 2010<sup>2</sup>. The types of home business have also evolved from home offices to include craft-based and cottage food-based businesses. In researching other jurisdictions and current home business practices in Berkeley, staff identified four additional amendments to the Berkeley Home Occupation chapter to better reflect the current practices and needs of home-businesses operating in Berkeley.

Staff-identified amendments include:

- 1) expanding customer/client visits to not only teaching-related HO businesses;
- 2) allow HO businesses in Accessory Buildings and Accessory Dwelling Units;
- 3) allow handling, processing, and storage of goods on-site (except for outdoors); and
- 4) reformatting the ordinance by consolidating information and requirements.

Discussion of each amendment is presented below. Planning Commission is asked to discuss and provide direction:

### **1. Customer/Client Visits:**

#### Current Situation:

Many Berkeley residents run home businesses, as demonstrated by the 116 low impact HO permits approved in 2018. Based on anecdotes and personal experience, staff believes that many of these HOs receive customer visits and should be classified as moderate-impact. The referral asks the PC to reconsider zoning regulations with respect to level of discretion and allowable number of customer visits.

#### Existing Zoning Regulations

- Low-impact HOs (permitted with a ZC) do not allow customer visits.
- Teaching-related HOs (permitted with an AUP) allow student visits (four at a time).
- Moderate-impact HOs (permitted with a UP(PH)) allow customer visits.

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<sup>2</sup> <https://www.census.gov/prod/2012pubs/p70-132.pdf>

### Policy Questions

1. What is the appropriate level of discretion for moderate-impact HOs with customer/client visits?
2. Should there be a maximum number of customer visits if allowed for low-impact and moderate-impact HOs?

### Proposed Changes and Staff Rationale:

*Referral Request: Moderate-impact HOs (permitted with an AUP) allow five visits per day. Teaching-related HOs allow for four students at a time, which could amount to many more per day and are allowed with an AUP. This option maintains consistent discretion between different categories of HOs, realistically reflects business needs and operations, and appropriately matches level of discretion to level of impact.*

*Alternate Approach: Low Impact HOs (permitted with ZC) allow four visits per day and Moderate Impact HOs (permitted with AUP) allow five or more visits per day.*

This option goes further than the referral request, allowing a limited number of customer visits with a ZC. This proposal reflects similar regulations seen in other jurisdictions.

## **2. HO in Accessory Buildings:**

### Current Situation

Many Berkeley residents run businesses as HOs on their properties. Based on 2016 data, 10.9% of Berkeley residents work from home<sup>3</sup>. Based on anecdotes, staff has learned that many of these HOs operate out of detached garages and other accessory buildings.

### Existing Zoning Regulations

- HOs must operate entirely within a dwelling unit or group living accommodation room.
- HOs must occupy less than 400 square feet and 20% of the unit.
- HOs are not allowed in in accessory buildings or garages.

### Policy Questions:

1. Should HOs be allowed to operate in Accessory Buildings?
2. If yes, should different size thresholds apply to dwelling units and Accessory Buildings?

### Proposed Changes and Staff Rationale

In order to align with current best practices in other cities and allow Berkeley HOs to operate legally, staff recommends HOs be allowed in Accessory Buildings. For example, it is common for artists to have their studios in Accessory Buildings (detached from the main dwelling), thus under existing regulations these artists cannot hold art classes within their studios. Staff believes allowing HOs in Accessory Buildings would maintain consistency with the definition of an Accessory Building:

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<sup>3</sup> <http://www.vitalsigns.mtc.ca.gov/commute-mode-choice#chart-2>



*A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot. Since HO's are considered an Incidental Use, allowing HO's in Accessory Buildings would be consistent with existing definitions.*

### **3. Storage and handling of goods on-site:**

#### Current Situation

Currently, Berkeley's practice is to allow HO's store and handle goods on a case by case basis, even though the Home Occupations chapter precludes the "storage, service, repair, handling or transport of good or products on or at the subject premises." Many home-based businesses involve production and transport of goods, where the quality or size of the product is such that the home occupation will not have significant impact on the surrounding neighborhood. Examples of these HO businesses include: graphic artist/photographer printing from a computer; painter/craftsperson preparing small-scale artwork; accountant/attorney/consultant preparing reports and documents; and preparation of cottage foods. Also note that State law allows "cottage foods" to be made in private homes and sold to the public according to the California Homemade Food Act (AB1616) which became effective in 2013.

#### Existing Zoning Regulations

- Low-impact and teaching-related HO's may not "involve the storage, service, repair, handling or transport of goods or products on or at the subject premises."
- Moderate-impact HO's that involve products onsite require a UP(PH).

#### Policy Questions

1. Should HO's be allowed to store and handle goods within the area of the HO?

#### Proposed Changes and Staff Rationale

The HO Ordinance does not provide guidance on what constitutes a "good or product." The intent of the HO provisions was not to require a Use Permit for any and all "products" at residential locations, but rather to prohibit those which would have the potential for significant neighborhood impact. After researching other jurisdictions' regulations and reviewing approved low-impact home occupations, staff determined that the majority of home businesses operate with "products" do not cause significant detrimental impacts to the neighborhood. Therefore, instead of requiring an interpretation of the HO Ordinance, staff believes that storage and handling of goods and products within the area of the HO should be allowed. Staff also recommends prohibiting outdoor storage of goods and products.

### **4. Restructuring and Consolidating Ordinance:**

#### Current Situation

Currently, the Home Occupations chapter (BMC 23C.16) is broken into six sections. The first section (010) lists the requirements applicable to all HO's. The second two sections

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(020 and 030) discuss the requirements for low-impact HOs and moderate-impact HOs (including teaching-related HOs). The last three sections (040, 050, and 060) include language regarding complaints, rentals, and medical cannabis residential cultivation.

Existing Zoning Regulations

See Attachment 4 of the BMC Home Occupations chapter (BMC 23C.16).

Proposed Changes and Staff Rationale

Staff proposes to take the opportunity to update the format and language of the Home Occupation Ordinance to provide more comprehensible regulations to the public. The reformatting would include consolidating repeated language and restructuring the format of the chapter.

**NEXT STEPS**

The next steps would be for the Planning Commission to direct staff to develop Zoning Ordinance language that reflects the Commission's discussion of policy questions and proposed changes. Staff will present proposed language to Planning Commission, before holding a Public Hearing.

**ATTACHMENTS**

1. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
2. Council Report on Home Occupations – November 17, 1998
3. Other Jurisdictions Comparison Table
4. Current Home Occupations chapter (BMC 23C.16)

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**Chapter 23C.16 HOME OCCUPATIONS<sup>1</sup>**

Sections:

- 23C.16.010 General Requirements for Home Occupations  
23C.16.020 ~~Home Occupation Classifications~~ ~~Low Impact Home Occupations Permitted by Right Subject to Business License~~  
~~23C.16.030 Moderate Impact Home Occupations Subject to Use Permit~~  
~~23C.16.0340 Complaints and Imposition of Conditions~~  
~~23C.16.0450 Home Occupation in Rental Unit~~  
~~23C.16.060 Medical Cannabis Residential Cultivation~~  
~~23C.16.030 Findings~~

**23C.16.010 General Requirements for Home Occupations**

A. The establishment of Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a Dwelling Unit, but rather shall be considered a lawful Incidental Use thereof.

B. All Home Occupations shall be subject to the following requirements:

1. No Home Occupation which involves a Firearm/Munitions Business may be allowed.
2. No Home Occupation which involves customer visits may be allowed in the ES-R District.
3. A Home Occupation shall be allowed within a dwelling unit, group living accommodation room, or accessory building.
4. A Home Occupations shall occupy less than four hundred (400) square feet or less than twenty percent (20%) of the dwelling unit, group living accommodation room, or accessory building, in which the business would occupy.
5. Only residents of the subject property shall conduct Home Occupation business-related activities onsite.
6. Client or customer visits shall occur within the hours of 10 a.m. and 8 p.m.
7. A Home Occupation shall not conduct business-related activities outdoors of the subject building, including storage, service, repair, handling or transport of goods or products.
8. A Home Occupation shall not involve hazardous materials or processes.
9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises.
10. A Home Occupation shall not have on-site signs identifying or advertising the Home Occupation.
11. A Home Occupation is subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04

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<sup>1</sup> Red strikeout = language removed

Red underlined = new language

Green underlined = new location of existing language

Green strikeout = old location existing language

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

12. A Home Occupation application may be filed by a lessee in possession of the property without the owner's signature.

**23C.16.020 Home Occupation Classifications ~~Low Impact Home Occupations Permitted by Right Subject to Business License~~**

A. A Low Impact Home Occupation involves no more than five visits per day, with no more than one client at a time, and shall be allowed subject to issuance of a Zoning Certificate.

B. A Moderate Impact Home Occupation involves six or more visits per day, with no more than four clients at a time, and shall be allowed subject to issuance of an Administrative Use Permit.

~~A Home Occupation which meets all of the following conditions shall be allowed by right in any Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~A. Such Home Occupations must:~~

~~1. Be conducted entirely within the dwelling unit or group living accommodation room;~~

~~2. Occupy less than four hundred (400) square feet and less than twenty percent (20%) of the dwelling unit or group living accommodation room;~~

~~B. Such home occupations may not:~~

~~1. Involve customer visits to the subject premises;~~

~~2. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~

~~3. Involve hazardous materials or processes; or~~

~~4. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises. (Ord. 6478- NS § 4 (part), 1999)~~

**23C.16.030 Moderate Impact Home Occupations Subject to Use Permit**

~~A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~1. Such Home Occupations must:~~

~~a. Be conducted entirely within the dwelling unit or group living accommodation room;~~

~~b. Operate within the hours of 10 a.m. and 10 p.m.; and~~

## DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

~~c.—Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;~~

~~—2.—Such home occupations may not:~~

~~a.—Involve more than four students at a time;~~

~~b.—Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~

~~c.—Involve hazardous materials, or processes; or~~

~~d.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.~~

~~B.——All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04. (Ord. 6909 NS § 1 (part), 2006; Ord. 6478 NS § 4 (part), 1999)~~

### ~~23C.16.040 Complaints and Imposition of Conditions~~

~~A.—Complaints regarding low-impact home occupations may be made to the Zoning Officer for review and enforcement action.~~

~~B.—If written complaints that include factual information on detrimental effects to the neighborhood from a Home Occupation are received, the Board may schedule a public hearing to review the Home Occupation. After such hearing the Board may approve a Use Permit to impose conditions upon the Home Occupation as may be necessary to prevent detrimental effects or it may initiate revocation proceedings. (Ord. 6478 NS § 4 (part), 1999)~~

### ~~23C.16.050 Home Occupation in Rental Unit~~

~~Any application for a Home Occupation may be filed by a lessee in possession of the property without the consent of the owner of record of the legal title and the application may be accepted without such owner's signature. In the case of a home occupation which requires a Use Permit, the owner shall be given notice of the proposed home occupation, in conformance with Section 23B.32.020.D. (Ord. 6478 NS § 4 (part), 1999)~~

### ~~23C.16.060 Medical Cannabis Residential Cultivation~~

~~No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property. (Ord. 7068 NS § 4 (part), 12/08/08)~~

### ~~23C.16.030 Findings~~

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**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

In addition to the findings set forth in 23B.28.050.A, in order to approve an Administrative Use Permit for the establishment or expansion of a Moderate Impact Home Occupation ~~with customer visits and/or handling of goods~~, the Zoning Officer or Board must find:

1. The degree of customer visits ~~and/or handling of goods, taken as a whole~~, will not cause a significant detrimental impact on the availability of parking spaces in the location the Home Occupation is being established;
2. If the proposed Home Occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the Home Occupation is being established.

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**MU-R District Findings**

**23E.84.090 Findings**

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
1. Be consistent with the purposes of the District;
  2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
  3. Be consistent with the adopted West Berkeley Plan;
  4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
  5. Be designed in such a manner to be supportive of the character and purposes of the District; and
  6. Be able to meet any applicable performance standards as described in Section [23E.84.070.H](#).
- C. In order to approve a Use Permit under Section [23E.84.040](#), the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:
1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.84.040.I or by reason of having been established after July 6, 1989;
  2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.
- D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section [23E.20.090](#) and must also make the following findings:

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;
  2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;
  3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.
- E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:
1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;
  2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.
- F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.



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~~G. In order to approve a Use Permit for the establishment or expansion of a home occupation with customer visits and/or handling of goods, the Zoning Officer or Board must find:~~

~~1. The degree of customer visits and/or handling of goods, taken as a whole, will not cause a significant detrimental impact on the availability of parking spaces in the location the home occupation is being established;~~

~~2. If the proposed home occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the home occupation is being established.~~

H. In order to approve a Use Permit for the establishment or expansion of a school, large family day care, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, large family day care or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;

2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;

3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, large family day care or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.

I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.

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- J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.
- K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:
1. The manufacturer is capable of meeting all applicable performance standards; and
  2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
- L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.
2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**R-1**

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.16.030 is amended to read as follows:

**23D.16.030 Uses Permitted**

<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Low Impact	ZC	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> <del>AUP</del>	Subject to the requirements of <del>Section</del> <del>Chapter</del> <a href="#">23C.16.030.B</a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	

**R-1A**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.20.030 is amended to read as follows:

**23D.20.030 Uses Permitted**

<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required yards
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter 23C.16.020</del> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section 23C.16.030.A</del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section Chapter 23C.16.030.B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	

**R-2**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.28.030 is amended to read as follows:

**23D.28.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

With Urban Agriculture	ZC	Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> <del>AUP</del>	Subject to the requirements of <del>Section</del> <del>Chapter</del> <a href="#">23C.16.030.B</a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**R-2A**

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.32.030 is amended to read as follows:

**23D.32.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section</del> Chapter <a href="#">23C.16.020</a> are met

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section</del> <a href="#">Chapter 23C.16.030.B</a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	

**R-3**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.36.030 is amended to read as follows:

**23D.36.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care/Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	



**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter 23C.16.020</del> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section 23C.16.030.A</del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section Chapter 23C.16.030-B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	

**R-4**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.40.030 is amended to read as follows:

**23D.40.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> .

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making of applicable findings set forth in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care, Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section</del> <a href="#">Chapter <a href="#">23C.16.030.B</a></a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**R-5**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.44.030 is amended to read as follows:

**23D.44.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings set forth in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care, Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Low Impact	ZC	If the requirements of <del>Section Chapter 23C.16.020</del> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section 23C.16.030.A</del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section Chapter 23C.16.030-B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

**R-S**

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.48.030 is amended to read as follows:

**23D.48.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings set forth in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Child Care, Family Day Care  Small Family Day Care Homes: of eight or fewer children  Large Family Day Care Homes: of nine to 14 children	ZC  AUP	
Fences  Six ft. or less in height  Exceeding six ft. in height	ZC  AUP	In required setbacks
Home Occupations  Low Impact  <del>Moderate Impact, teaching- related</del>  Moderate Impact	ZC  AUP  UP(PH)  AUP	If the requirements of <del>Section Chapter 23C.16.020</del> are met  <del>Subject to the requirements of Section 23C.16.030.A</del>  Subject to the requirements of <del>Section</del> <del>Chapter 23C.16.030.B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

**R-SMU**

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.52.030 is amended to read as follows:

**23D.52.030 Uses Permitted**

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <a href="#">23D.08</a>
If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>	AUP	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>
Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings set forth in Section <a href="#">23C.24.070</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care, Family Day Care  Small Family Day Care Homes: of eight or fewer children  Large Family Day Care Homes: of nine to 14 children	ZC  AUP	
Fences  Six ft. or less in height  Exceeding six ft. in height	ZC  AUP	In required setbacks
Home Occupations  Low Impact  <del>Moderate Impact, teaching-related</del>  Moderate Impact	ZC  AUP  <del>UP(PH)</del>  AUP	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met  <del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>  Subject to the requirements of <del>Section</del> <a href="#">Chapter 23C.16.030.B</a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Stables for Horses	Prohibited	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
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**C-W**

The “Residential and Related Uses” section of Berkeley Municipal Code Table 23E.64.030 is amended to read as follows:

**23E.64.030 Uses Permitted**

Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Additions, Major Residential	AUP	See definition in Sub-title <a href="#">23F</a> . Subject to required finding under Section <a href="#">23E.64.090.G</a>
Short-Term Rental	ZC	Subject to requirements of Chapter <a href="#">23C.22</a>
Child Care; Family Day Care		
Small Family Day Care Homes of 8 or fewer children	ZC	
Large Family Day Care Homes of 9 to 14 children	AUP	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to Development Standards under Section <a href="#">23E.64.070</a>

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Group Living Accommodations	UP(PH)	Subject to Development Standards under Section <a href="#">23E.64.070</a>
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section</del> <a href="#">Chapter 23C.16.030.B</a>
Hospitals	UP(PH)	Subject to parking requirements; see Section <a href="#">23E.64.080.F</a>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.070.C</a>
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section <a href="#">23E.64.080.F</a>
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		
Six or fewer persons	ZC	Changes of use from an existing dwelling unit
Seven or more persons	AUP	
New Construction	UP(PH)	
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table <a href="#">23D.36.030</a>
Accessory Buildings and Structures with Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>



**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

**MU-R**

The "Residential and Related Uses" section of Berkeley Municipal Code Table 23E.84.030 is amended to read as follows:

**23E.84.030 Uses Permitted**

Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a>	AUP	Subject to making applicable findings in Section <a href="#">23C.24.070</a>
Additions, Major Residential	AUP	See Definition in Sub-title <a href="#">23F</a> . Subject to finding required under <a href="#">23E.84.090.L</a> ; see limitations on location in Section <a href="#">23E.84.060.G</a>
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	Subject to the findings in Section <a href="#">23E.84.090.H</a>
Child Care; Family Day Care		
Small Family Day Care Homes of 8 or fewer children	ZC	
Large Family Day Care Homes of 9 to 14 children	AUP	Subject to the findings in Section <a href="#">23E.84.090.H</a>
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes (Changes of Use)	ZC	Subject to parking requirements; see Section <a href="#">23E.84.080.B</a>
Community Centers	UP(PH)	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Dwelling Units		See limitation on location in Section <a href="#">23E.84.060.G</a> . Subject to development standards of Section <a href="#">23E.84.070</a> and parking requirements in Section <a href="#">23E.84.080.B</a>
1 – 4 Units	AUP	
5+ Units	UP(PH)	
Group Living Accommodations, subject to R-3 District Standards	UP(PH)	See limitations on location in Section <a href="#">23E.84.060.G</a>
Home Occupations		
Low Impact	ZC	If the requirements of <del>Section Chapter</del> <a href="#">23C.16.020</a> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <a href="#">23C.16.030.A</a></del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of <del>Section Chapter</del> <a href="#">23C.16.030.B</a>
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section <a href="#">23D.08.060.C</a>
Libraries	UP(PH)	Subject to additional parking requirements; see Section <a href="#">23E.84.080.B</a>
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section <a href="#">23E.84.080.B</a>
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under <a href="#">23E.84.090.H</a>
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	

**DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS**

Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section <a href="#">23E.84.090.H</a>
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	<a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a>





Planning Commission

1                   **FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2   **November 7, 2018**

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

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

5 **1. ROLL CALL:**

6 **Commissioners Present:** Steve Martinot, Robb William Kapla, Christine Schildt, Jeff  
7 Vincent, Benjamin Fong, Prakash Pinto, Benjamin Beach, Mary Kay Lacey.

8 **Commissioners Absent:** Rob Wrenn (unexcused)

9 **Staff Present:** Secretary Alene Pearson and Sydney Stephenson.

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

11 **3. PUBLIC COMMENT PERIOD:** No speakers.

12 **4. PLANNING STAFF REPORT:** At the October City Council meeting a new referral was  
13 approved to review and revise Chapter 22.16 in regards to community benefits. The City  
14 Manager also gave staff new directions on Cannabis regulations from Council, including  
15 developing regulations for cannabis nurseries. Staff will bring new cannabis nurseries  
16 regulations to the next Planning Commission meeting. Three communications were passed  
17 out tonight. This will be Sydney Stephenson's last Planning Commission meeting.

18 **Communication in the Packet:**

- 19 • 2018-11-07 – 2018 Housing Trust Fund RFP: Applications Received – Jenny Wyant,  
20 Community Development Project Coordinator

21 **Late Communications (Received after the Packet deadline):**

- 22  
23 • 2018-11-07 – New Zero Waste Transfer Station Workshop  
24 • 2018-11-07 – Corrected Commercial Recreation Centers Staff Report – Staff, Item 13

25 **Late Communications (Received and distributed at the meeting):** None.

26 **5. CHAIR REPORT:** None.

27 **6. COMMITTEE REPORT:** The ZORP project will be put on hold for six months and the next  
28 ZORP subcommittee meeting will be in April 2019. The JSISHL November 15 meeting was  
29 cancelled because it will not have a quorum.

30 **7. APPROVAL OF MINUTES:**

31 Motion/Second/Carried (Vincent/Pinto) to approve the Planning Commission Meeting Minutes  
32 from October 3, 2018 with amendment to motion from Item 9. Ayes: Martinot, Schildt, Fong,  
33 Kapla, Vincent, Lacey, Pinto. Noes: None. Abstain: Beach. Absent: Wrenn. (7-0-1-1)  
34

35 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next  
36 meeting, December 5, bike parking regulations and cannabis nursery regulations will be  
37 presented.

38 **AGENDA ITEMS**

39 **9. Discussion: Local Hazard Mitigation Plan (LHMP) Presentation**

40 Staff from the Office of Emergency Services introduced the Local Hazard Mitigation Plan and  
41 the role the Planning Commission will play in the adoption of the Plan. The Planning  
42 Commission will be reviewing the first draft of the plan around January or February 2019.  
43 And then in October 2019, the Planning Commission will review and recommend the final  
44 draft to the City Council. The Planning Commission asked questions about the Plan and the  
45 process.

46 Public Comments: No speakers.

47 **10. Action: Public Hearing: Referral Response to Amending Home**  
48 **Occupations Chapter 23C.16**

49 Staff presented the amendments to the Home Occupations Chapter (23C.16) for the public  
50 hearing. The Commission asked clarifying questions and then opened the public hearing.  
51 The Commission closed the public hearing and discussed the proposed amendments. The  
52 Commission agreed on all the proposed amendments, however, discussed modifications for  
53 the hours of client/customer visits, and allowing non-resident employees. The Planning  
54 Commission agreed upon changing the language regarding hours of client/customer visits.  
55 The Commission also agreed to add a language for Moderate Impact Home Occupations, to  
56 allow for one non-resident individual engaged in business-related activities onsite. The  
57 Commission made the following motion.

58 Motion/Second/Carried (Schildt/Pinto) to open the public hearing for Item 10. Ayes: Martinot,  
59 Kapla, Schildt, Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain: None. Absent:  
60 Wrenn. (8-0-0-1)  
61

62 No public comment.  
63

64 Motion/Second/Carried (Schildt/Pinto) to close the public hearing for Item 10. Ayes: Martinot,  
65 Kapla, Schildt, Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain: None. Absent:  
66 Wrenn. (8-0-0-1)  
67

68 Motion/Second/Carried (Schildt/Vincent) to recommend to Council to approve all eight of  
69 staff's amendments to the Home Occupations Chapter, with the following modifications: 1)  
70 change the language for visiting hours (23C.16.010.B.6) to read "A Home Occupation shall  
71 establish client or customer visiting hours between 10am to 8pm." 2) Allow one non-resident  
72 employee for moderate impact home occupation by adding the following language to  
73 23C.16.020.B, "A Moderate Impact Home Occupation shall allow for one non-resident  
74 individual engaged in business-related activities onsite." Ayes: Martinot, Kapla, Schildt,  
75 Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain: None. Absent: Wrenn. (8-0-0-1)  
76

77 Public Comments: No speakers.

78 **11. Action: 2018-2019 Planning Commission Work Plan**

79 Commissioner Vincent presented the 2018-2019 Planning Commission Work Plan that the  
80 subcommittee worked on. The Commission discussed the organization of the table and  
81 possibly collapsing the Density Bonus Package in the table. The Commission made the  
82 following motion.

83 Motion/Second/Carried (Kapla/Schildt) to approve the 2018-2019 Work Plan with edits that  
84 Commissioner Vincent will make before sending it to staff to send it to the City Council.  
85 Ayes: Martinot, Kapla, Schildt, Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain:  
86 None. Absent: Wrenn. (8-0-0-1)  
87

88 Public Comments: No speakers.

89 **12. Action: 2019 Planning Commission Calendar**

90 Staff presented the proposed 2019 Calendar and stated that there will only be one  
91 Commission meeting a month. The Commission discussed the pros and cons for having one  
92 meeting scheduled a month versus having two meetings scheduled a month and cancelling  
93 the 2<sup>nd</sup> when needed. The Planning Commission made the following motion.

94 Motion/Second/Carried (Lacey/Kapla) to approve the 2019 Planning Commission Calendar  
95 after changing the July 3<sup>rd</sup> meeting to July 17<sup>th</sup>. Ayes: Kapla, Schildt, Vincent, Fong, Pinto,  
96 Beach, Lacey. Noes: None. Abstain: Martinot. Absent: Wrenn. (7-0-1-1)  
97

98 Public Comments: No speakers.

99 **13. Action: Commercial Recreation Center Permit Threshold Clarification**

100 Staff presented the clarification for the permit threshold of Commercial Recreation Centers  
101 (CRCs) in Neighborhood Commercial districts. The technical amendment presented in the  
102 City Council report would allow CRCs in Neighborhood Commercial districts with an AUP for  
103 under 3,000 sq. ft. uses and UP(PH) for uses over 3,000 sq. ft. The Commission made the  
104 following motion.

105  
106  
107

Motion/Second/Carried (Pinto/Kapla) to endorse the technical amendment presented in the City Council report. Ayes: Martinot, Kapla, Schildt, Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain: None. Absent: Wrenn. (8-0-0-1)

108 **The meeting was adjourned at 9:26 pm**  
109 **Commissioners in attendance: 8 of 9**  
110 **Members in the public in attendance: 1**  
111 **Public Speakers: 0 speakers**  
112 **Length of the meeting: 2 hours and 23 minutes**



1 **Chapter 23C.16: Home Occupations**

2 Sections:

3 23C.16.010 ~~General Requirements Home Occupations~~

4 23C.16.020 ~~Permits Requirements Home Occupations Classifications Low Impact Home~~  
5 ~~Occupations Permitted by Right Subject to Business License~~

6 23C.16.030 ~~Moderate Impact Home Occupations Subject to Use Permit~~

7 23C.16.040 ~~Complaints and Imposition of Conditions~~

8 23C.16.050 ~~Home Occupation in Rental Unit~~

9 23C.16.060 ~~Medical Cannabis Residential Cultivation~~

10 23C.16.030 Findings

11 **23C.16.010 General Requirements Home Occupations**

12 A. The establishment of a Home Occupation in compliance with this Chapter shall not be  
13 considered a Change of Use of a Dwelling Unit, but rather shall be considered a lawful  
14 Incidental Use thereof.

15 B. Home Occupations are subject to the following requirements: No Home Occupation  
16 which involves a Firearm/Munitions Business may be allowed.

17 1. A Home Occupation is allowed as an incidental use within a Dwelling Unit, Accessory  
18 Dwelling Unit, Accessory Building, or Group Living Accommodation room.

19 2. No Firearm/Munitions Business may operate as a Home Occupation.

20 3. Customer visits are not allowed in the ES-R District.

21 4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20  
22 percent of the gross floor area of the Dwelling Unit, Accessory Dwelling Unit, Accessory  
23 Building, or Group Living Accommodation room from which it operates.

24 5. Only residents of the subject Dwelling Unit, Accessory Dwelling Unit or Group Living  
25 Accommodation room may operate a Home Occupation business.

26 6. Client or customer visits may occur only between the hours of 10 a.m. and 8 p.m.

27 7. Storage, services, or repairs may not be conducted outdoors.

28 8. A Home Occupation shall not process or involve hazardous materials or waste as defined  
29 by BMC 15.08.060

30 9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors,  
31 heat, dirt or electrical disturbance perceptible by the average person beyond the lot line  
32 or party walls of multi-unit building, of the subject premises.

33 10. No on-site signs identifying or advertising the Home Occupation are allowed.

34 11. The operator of a Home Occupation shall pay gross receipts taxes pursuant to the City's  
35 business license tax ordinance as set forth in Chapter 9.04.

36 12. A lessee in possession of a property may apply for a Permit without the property owner's  
37 signature.

38 ~~C.—No Home Occupation which involves customer visits may be allowed in the ES-R District.~~

39 **23C.16.020 Permit Requirements Low Impact Home Occupations Permitted by Right**

40 **Subject to Business License**

41 A. A Low Impact Home Occupation is allowed subject to a Zoning Certificate.

42 B. A Moderate Impact Home Occupation is allowed subject to issuance of an  
43 Administrative Use Permit.

44 ~~A Home Occupation which meets all of the following conditions shall be allowed by right in any~~  
45 ~~Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts~~  
46 ~~tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

47 A.—~~Such Home Occupations must:~~

48 ~~1.—Be conducted entirely within the dwelling unit or group living accommodation room;~~

49 ~~2.—Occupy less than four hundred (400) square feet and less than twenty percent (20%)~~  
50 ~~of the dwelling unit or group living accommodation room;~~

51 B.—~~Such home occupations may not:~~

52 ~~1.—Involve customer visits to the subject premises;~~

53 ~~2.—Involve storage, service, repair, handling or transport of goods or products on or at the~~  
54 ~~subject premises;~~

55 ~~3.—Involve hazardous materials or processes; or~~

56 ~~4.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical~~  
57 ~~disturbance perceptible by the average person beyond the lot line or party walls of multi-~~  
58 ~~unit building, of the subject premises.~~

59 **23C.16.030 Findings Moderate Impact Home Occupations Subject to Use Permit**

60

61 ~~In addition to the findings set forth in Section 23B.28.050.A, in order to approve an~~  
62 ~~Administrative Use Permit for the establishment or expansion of a Moderate Impact Home~~  
63 ~~Occupation, the Zoning Officer must find:~~

64 ~~1. The degree of customer visits will not cause a significant detrimental impact on the~~  
65 ~~availability of parking spaces in the vicinity of the Home Occupation; and~~

66 ~~2. If the proposed Home Occupation will require loading space on a regular basis, such~~  
67 ~~loading space will be available on the subject property or the use of on-street loading~~  
68 ~~space will not cause a significant detrimental impact on the availability of parking spaces~~  
69 ~~or on traffic flow in the vicinity of the Home Occupation.~~

70 ~~A.—A teaching-related home occupation which meets all of the following conditions shall be~~  
71 ~~allowed subject to issuance of an Administrative Use Permit and subject to payment of~~  
72 ~~gross receipts tax pursuant to the City's business license tax ordinance as set forth in~~  
73 ~~Chapter 9.04.~~

74 ~~1.—Such Home Occupations must:~~

75 ~~a.—Be conducted entirely within the dwelling unit or group living accommodation~~  
76 ~~room;~~

77 ~~b.—Operate within the hours of 10 a.m. and 10 p.m.; and~~

78 ~~c.—Occupy less than 400 square feet and less than 20% of the dwelling unit or~~  
79 ~~group living accommodation room;~~

80 ~~2.—Such home occupations may not:~~

81 ~~a.—Involve more than four students at a time;~~

82 ~~b.—Involve storage, service, repair, handling or transport of goods or products on or~~  
83 ~~at the subject premises;~~

84 ~~c.—Involve hazardous materials, or processes; or~~

85 ~~d.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical~~  
86 ~~disturbance perceptible by the average person beyond that lot line or party walls of~~  
87 ~~multi-unit buildings, or the subject premises.~~

88 ~~B.—All other home occupations that involve customer visits, or products on the subject~~  
89 ~~premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only~~  
90 ~~by a Use Permit and public hearing, and are subject to the payment of gross receipts tax~~  
91 ~~pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

92 **~~23C.16.040 Complaints and Imposition of Conditions~~**

93 ~~A.—Complaints regarding low-impact home occupations may be made to the Zoning~~  
94 ~~Officer for review and enforcement action.~~

95 ~~B.—If written complaints that include factual information on detrimental effects to the~~  
96 ~~neighborhood from a Home Occupation are received, the Board may schedule a public~~  
97 ~~hearing to review the Home Occupation. After such hearing the Board may approve a~~  
98 ~~Use Permit to impose conditions upon the Home Occupation as may be necessary to~~  
99 ~~prevent detrimental effects or it may initiate revocation proceedings.~~

100 **~~23C.16.050 Home Occupation in Rental Unit~~**

101 ~~Any application for a Home Occupation may be filed by a lessee in possession of the property~~  
102 ~~without the consent of the owner of record of the legal title and the application may be accepted~~  
103 ~~without such owner's signature. In the case of a home occupation which requires a Use Permit,~~  
104 ~~the owner shall be given notice of the proposed home occupation, in conformance with~~  
105 ~~Section 23B.32.020.D.~~

106 **~~23C.16.060 Medical Cannabis Residential Cultivation~~**

107 ~~No Use Permit shall be required for qualified patients to cultivate medical cannabis in their~~  
108 ~~residence or on their residential property.~~

109

110 **Chapter 23E.84: MU-R Mixed Use-Residential District Provisions**

111 **23E.84.090 Findings**

112 A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make  
113 the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the  
114 findings required by the following paragraphs of this section to the extent applicable:

115 B. A proposed use or structure must:

116 1. Be consistent with the purposes of the District;

117 2. Be consistent with the normal use and operation of surrounding uses and buildings,  
118 including residential and industrial buildings;

119 3. Be consistent with the adopted West Berkeley Plan;

120 4. Not be likely, under reasonably foreseeable circumstances, to either induce or  
121 contribute to a cumulative change of use in buildings away from residential; live/work; light  
122 industrial, or arts and crafts uses;

123 5. Be designed in such a manner to be supportive of the character and purposes of the  
124 District; and

125 6. Be able to meet any applicable performance standards as described in  
126 Section 23E.84.070.H.

127 C. In order to approve a Use Permit under Section 23E.84.040, the Zoning Officer or Board  
128 must find that the space formerly occupied by the protected use has been replaced with a  
129 comparable space in the West Berkeley Plan area, which is reserved for use by any protected  
130 use in the same category:

131 1. For purposes of this section, such replacement space shall not qualify for exemption  
132 under Section 23E.84.040.I or by reason of having been established after July 6, 1989;

133 2. In considering whether a project will be detrimental, consideration shall be limited to the  
134 potential detriment associated with the new use, and dislocation of any specific previous  
135 occupant or use shall not be a basis for finding detriment.

136 D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in  
137 this District, the Zoning Officer or Board must make all applicable findings for approval of  
138 Live/Work Units required by Section 23E.20.090 and must also make the following findings:

139 1. Establishment of Live/Work Unit will not interfere with the lawful operation of  
140 manufacturers and other industries existing in or adjacent to the District, and will not impede  
141 the lawful future establishment of manufacturers and other industries permitted under the  
142 West Berkeley Plan;

143 2. The applicant has recorded with the County Recorder a statement acknowledging that  
144 the Live/Work Unit is being established in a District where manufacturers and other  
145 industries operate lawfully and that they will not seek to impede their lawful operation. In  
146 addition, the applicant will require any tenants to sign such a statement, and require all  
147 persons purchasing Live/Work Units to sign and record such a statement;

148 3. If the applicant is proposing to change one or more dwelling units to Live/Work Units,  
149 that the elimination of dwelling unit(s) and the change of use would not be materially  
150 detrimental to the housing needs and public interest of the affected neighborhood and the  
151 City.

152 E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade,  
153 or warehouse space to another use, the Zoning Officer or Board must make both of the following  
154 findings:

155 1. The change of use of the space will not have a materially detrimental impact on the  
156 character of the MU-R District as a light industrial district, with particular reference to the  
157 character of the blocks and parts of blocks in the part of the District that is contiguous with  
158 the site;

159 2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been  
160 made for loss of the manufacturing space through providing such space elsewhere in  
161 Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other

162 appropriate means as determined by the Zoning Officer or the Board. However, no  
163 mitigation shall be required for manufacturing, warehousing, or wholesale trade space which  
164 is less than or equal to 25% of the floor area currently or most recently used for  
165 manufacturing, warehousing or wholesale trade.

166 F. In order to approve a Permit for the establishment or expansion of a food service use, the  
167 Zoning Officer or Board must find that the establishment of the food service use, given its size,  
168 location, physical appearance and other relevant characteristics, will not have a significant  
169 detrimental impact on the industrial or residential character of the area. In order to approve an  
170 Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the  
171 Zoning Officer must find that a substantial portion of the food consists of goods manufactured on  
172 site.

173 ~~G.—In order to approve a Use Permit for the establishment or expansion of a home occupation~~  
174 ~~with customer visits and/or handling of goods, the Zoning Officer or Board must find:~~

175 ~~1.—The degree of customer visits and/or handling of goods, taken as a whole, will not cause~~  
176 ~~a significant detrimental impact on the availability of parking spaces in the location the home~~  
177 ~~occupation is being established;~~

178 ~~2.—If the proposed home occupation will require loading space on a regular basis, such~~  
179 ~~loading space will be available on the subject property, or that the use of on-street loading~~  
180 ~~space will not cause a significant detrimental impact on the availability of parking spaces or~~  
181 ~~on traffic flow in the location the home occupation is being established.~~

182 H.G. In order to approve a Use Permit for the establishment or expansion of a school, child care  
183 center, or recreational or educational facility to be used by children, the Zoning Officer or Board  
184 must make all of the following findings:

185 1. Development of the school, child care center, or recreational facility to be used by  
186 children is not, in the particular circumstances of the project, incompatible with adjacent and  
187 nearby uses;

188 2. An appropriate risk analysis or risk assessment, as defined by the City, has been made  
189 and has shown that there is not significant risk to children in the use from other activities  
190 near the site;

191 3. The applicants have made adequate provisions to ensure that all parents of students  
192 or children in the school, child care center, or recreational facility to be used by children will  
193 be notified in writing (on a form approved by the City) that the school is in the West Berkeley  
194 Plan MU-R District, and that light manufacturing is a permitted activity in the District and that  
195 Primary Production Manufacturing or Construction Products Manufacturing may be  
196 permitted uses in adjacent districts, including a requirement that each parent will indicate  
197 that they have read and understood this information by means of a written statement  
198 returned to the school or child care center and available for review.

199 ~~I.H.~~ In order to approve a Use Permit for the establishment or expansion of a mixed use  
200 containing a residential use the Zoning Officer or Board must find that the specific combination of  
201 residential and non-residential use proposed by the applicant will not be hazardous or detrimental,  
202 either to persons living and/or working on the site, or to persons living or working in its vicinity.

203 ~~J.I.~~ In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking  
204 under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not  
205 lead to an undue shortage of automobile parking spaces and that it can be reasonably expected  
206 that there will be demand for the bicycle and/or motorcycle parking spaces.

207 ~~K.J.~~ In order to approve a Use Permit for the establishment or expansion of a manufacturing use  
208 abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must  
209 find:

- 210 1. The manufacturer is capable of meeting all applicable performance standards; and  
211 2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors,  
212 dust, vibration, glare and any other potential impacts on the abutting dwelling units.

213 ~~L.K.~~ 1. To deny a Use Permit to establish one or more dwelling units the Board must find that  
214 the proposed residential use would unreasonably interfere with existing or reasonably foreseeable  
215 adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable  
216 adjacent land uses in the M and/or MM District would have a material adverse effect on the  
217 proposed residential use. The owner(s) of record of the residential property shall also record an  
218 acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM  
219 District may create noise, dust, odors, light/glare, and other impacts that shall not be considered  
220 a nuisance if they are developed and conducted pursuant to the standards of the District.



221 2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer  
222 must find that the proposed addition would unreasonably interfere with existing or  
223 reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing  
224 or reasonably foreseeable adjacent land uses in the M and/or MM District would have a  
225 material adverse effect on the use of the proposed addition. The owner(s) of record of the  
226 residential property shall also record an acknowledgement that existing or reasonably  
227 foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors,  
228 light/glare, and other impacts that shall not be considered a nuisance if they are developed  
229 and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord.  
230 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

231

232

## 233 Chapter 23F.04: Definitions

### 234 23F.04.010 Definitions

235 For the purposes of this chapter certain terms used herein are defined as follows:

236 **Home Occupation:** A business use conducted on ~~residential~~ property developed with Residential  
237 use, which is incidental and secondary to the Residential use, does not change the residential  
238 character thereof, is limited so as not to substantially reduce the Residential use of the dwelling,  
239 Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room and is  
240 operated only by the resident's inhabitants of the subject residence. There are two classification  
241 of Home Occupations:

242 1. Low Impact Home Occupation involves no more than five visits per day, with no more  
243 than one client or customer at a time.

244 2. Moderate Impact Home Occupation involves six or more visits per day, with no more  
245 than four clients or customers at a time and up to one non-resident employee or individual  
246 engaging in business-related activities on-site.

247 ~~Home Occupation, Teaching-Related: A home-based business as defined under the Home~~  
248 ~~Occupation definition that provides academic and/or artistic tutoring or lessons, excluding~~  
249 ~~schools, studios and conservatories.~~

250 Chapter 23D.16: R-1 Single Family Residential District Provisions

251 23D.16.030 Uses Permitted

<b>Table 23D.16.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		

<b>Table 23D.16.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Low Impact	ZC	If the <u>Subject to the</u> requirements of <u>Section Chapter 23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030.A</u></del>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter 23C.16.030.B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

253 Chapter 23D.20: R-1A Limited Two-Family Residential District Provisions

254 23D.20.030 Uses Permitted

<b>Table 23D.20.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	

<b>Table 23D.20.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Exceeding six ft. in height	AUP	In required yards
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <del>Section Chapter</del> <u>23C.16.020</u> <del>are met</del>
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030-A</u></del>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter</del> <u>23C.16.030-B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

255

256 **Chapter 23D.28: R-2 Restricted Two-Family Residential District Provisions**

257 **23D.28.030 Uses Permitted**

<b>Table 23D.28.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		

Table 23D.28.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <del>Section Chapter</del> <u>23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section</del> <u>23C.16.030.A</u>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter</del> <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

258



259 **Chapter 23D.32: R-2A Restricted Multiple-Family Residential District Provisions**

260 **23D.32.030 Uses Permitted**

<b>Table 23D.32.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks

Table 23D.32.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <del>Section Chapter</del> <u>23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section</del> <u>23C.16.030.A</u>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter</del> <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

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262 **Chapter 23D.36: R-3 Multiple Family Residential District Provisions**

263 **23D.36.030 Uses Permitted**

<b>Table 23D.36.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		

Table 23D.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <del>Section Chapter</del> <u>23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section</del> <u>23C.16.030.A</u>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter</del> <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	

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265 **Chapter 23D.40: R-4 Multi-Family Residential District Provisions**

266 **23D.40.030 Uses Permitted**

<b>Table 23D.40.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u> .
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making of applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		

<b>Table 23D.40.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <del>Section Chapter</del> <u>23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section</del> <u>23C.16.030.A</u>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter</del> <u>23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

268 **Chapter 23D.44: R-5 High Density Residential District Provisions**

269 **23D.44.030 Uses Permitted**

<b>Table 23D.44.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		

Table 23D.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <u>Section Chapter 23C.16.020</u> <del>are met</del>
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030.A</u></del>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <del>Section Chapter 23C.16.030.B</del>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street



271 **Chapter 23D.48: R-S Residential Southside District Provisions**

272 **23D.48.030 Uses Permitted**

<b>Table 23D.48.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	

Table 23D.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	<del>If the</del> <u>Subject to the</u> requirements of <u>Section Chapter 23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030.A</u></del>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of <u>Section Chapter 23C.16.030.B</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

274 **Chapter 23D.52: R-SMU Residential Southside Mixed Use District Provisions**

275 **23D.52.030 Uses Permitted**

<b>Table 23D.52.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter <u>23D.08</u>
If has either habitable space and/or exceeds the requirements under Chapter <u>23D.08</u>	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>
Accessory Dwelling Units in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings set forth in Section <u>23C.24.070</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		

<b>Table 23D.52.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Low Impact	ZC	<del>If Subject to</del> the requirements of <del>Section Chapter</del> <del>23C.16.020</del> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section 23C.16.030.A</del>
Moderate Impact	<del>UP(PH)</del> <del>AUP</del>	Subject to the requirements of <del>Section Chapter</del> <del>23C.16.030.B</del>
Low Impact	ZC	If the requirements of <del>Section Chapter</del> <del>23C.16.020</del> are met
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

277 **Chapter 23E.64: C-W West Berkeley Commercial District Provisions**

278 **23E.64.030 Uses Permitted**

<b>Table 23E.64.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
<b>Residential and Related Uses</b>		
Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Additions, Major Residential	AUP	See definition in Sub-title <u>23F</u> . Subject to required finding under Section <u>23E.64.090.G</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	

<b>Table 23E.64.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Dwelling Units	UP(PH)	Subject to Development Standards under Section <u>23E.64.070</u>
Group Living Accommodations	UP(PH)	Subject to Development Standards under Section <u>23E.64.070</u>
Low Impact	ZC	If <u>Subject</u> to the requirements of Section <u>Chapter 23C.16.020</u> are met
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030.A</u></del>
Moderate Impact	<del>UP(PH)</del> <u>AUP</u>	Subject to the requirements of Section <u>Chapter 23C.16.030.B</u>
Low Impact	ZC	If the requirements of Section <u>Chapter 23C.16.020</u> are met
Hospitals	UP(PH)	Subject to parking requirements; see Section <u>23E.64.080.F</u>
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.070.C
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	

<b>Table 23E.64.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Libraries	UP(PH)	Subject to parking requirements; see Section <u>23E.64.080.F</u>
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table <u>23D.36.030</u>
Accessory Buildings and Structures with Urban Agriculture	ZC	<u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>

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281 **Chapter 23E.84: MU-R Mixed Use-Residential District Provisions**

282 **23E.84.030 Uses Permitted**

<b>Table 23E.84.030</b>		
<b>Use and Required Permits</b>		
<b>Uses</b>	<b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
<b>Residential and Related Uses</b>		
Accessory Dwelling Unit in compliance with Section <u>23C.24.050</u>	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section <u>23C.24.050</u>	AUP	Subject to making applicable findings in Section <u>23C.24.070</u>
Additions, Major Residential	AUP	See Definition in Sub-title <u>23F</u> . Subject to finding required under <u>23E.84.090.L</u> ; see limitations on location in Section <u>23E.84.060.G</u>
Short-Term Rental	ZC	Subject to requirements of Chapter <u>23C.22</u>
Child Care Centers	UP(PH)	Subject to the findings in Section <u>23E.84.090.H</u>
Child Care; Family Daycare Home (Small or Large)	ZC	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes (Changes of Use)	ZC	Subject to parking requirements; see Section <u>23E.84.080.B</u>
Community Centers	UP(PH)	
Dwelling Units		See limitation on location in Section <u>23E.84.060.G</u> . Subject to development



Table 23E.84.030		
Use and Required Permits		
Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
		standards of Section <u>23E.84.070</u> and parking requirements in Section <u>23E.84.080.B</u>
1 – 4 Units	AUP	
5+ Units	UP(PH)	
Group Living Accommodations, subject to R-3 District Standards	UP(PH)	See limitations on location in Section <u>23E.84.060.G</u>
Home Occupations		
Low Impact	ZC	<del>If Subject to the requirements of Section Chapter 23C.16.020 are met</del>
<del>Moderate Impact, teaching-related</del>	<del>AUP</del>	<del>Subject to the requirements of Section <u>23C.16.030.A</u></del>
Moderate Impact	<del>UP(PH)</del> AUP	Subject to the requirements of Section <del>Chapter 23C.16.030.B</del>
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section <u>23D.08.060.C</u>
Libraries	UP(PH)	Subject to additional parking requirements; see Section <u>23E.84.080.B</u>
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section <u>23E.84.080.B</u>

<b>Table 23E.84.030</b>		
<b>Use and Required Permits</b>		
<b>Uses</b>	<b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under <u>23E.84.090.H</u>
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section <u>23E.84.090.H</u>
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	Subject to <u>23C.26</u> , <u>23D.08.010</u> , <u>23D.08.020</u> , <u>23D.08.050</u> , and <u>23D.08.060</u>



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

## STAFF REPORT

DATE: July 1, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner  
Alene Pearson, Principal Planner

SUBJECT: Referrals Supporting Berkeley Businesses

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### BACKGROUND

City Council has referred Planning Commission a set of five items that support Berkeley businesses and bolster Berkeley's commercial districts and commercial businesses. Referrals range in scope from broad suggestions to targeted requests but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**b. Clarify design review and guidelines for signs in commercial districts –**

The approval process and requirements for obtaining sign permits in commercial districts can be updated to improve clarity for applicants and consistency between projects and within districts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **DISCUSSION**

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

### **Analysis Approach**

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

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

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

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

## 1. Activity Based Experiences

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

### Research Questions:

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

## 2. Allowable Uses

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

### Research Questions:

- *Change of Use Thresholds* – What are the existing thresholds and permit requirements for a change of use in commercial districts? Is there a need for square footage to serve as an indicator permit type?
- *Expanding Hours of Operation* – What are the existing regulations in commercial districts? What is the rationale for these regulations and are there opportunities for modifications across some or all commercial districts?

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

### 3. Alcohol Service

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

#### Research Questions:

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

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



#### 4. Sign Ordinance Updates

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

#### Research Questions:

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

#### Planning Commission Questions:

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

#### **NEXT STEPS**

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

#### Links:

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

[https://www.cityofberkeley.info/Clerk/City\\_Council/2016/10\\_Oct/Documents/2016-10-18\\_Item\\_24\\_Expanding\\_the\\_Downtown\\_Arts.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_24_Expanding_the_Downtown_Arts.aspx)

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

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

**Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19):**

[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/06\\_June/Documents/2019-06-25\\_Item\\_37\\_Zoning\\_Ordinance\\_Modification.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx)

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

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

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

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



Office of the City Manager

INFORMATION CALENDAR  
April 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Eight previous referrals to the Planning Department which can be tracked as fulfilled

INTRODUCTION

The Planning and Development Department proposes that eight previous referrals be deemed “fulfilled” and removed from the City Clerk’s tracking list. In each case, the goals of the referrals listed below have been met through either local or state action since the last time Council considered its annual Reweighted Range Voting (RRV) process for referral prioritization.

CURRENT SITUATION AND ITS EFFECTS

This section lists each of the referrals now proposed for closure, background on the original Council request, and a description of which actions lead staff to conclude that the goals of the referral have now been fulfilled.

**Toxic Remediation:**

- Original referral date: May 1, 2012 (see Attachment 1)
- Sponsors: Councilmembers Moore, Wozniak
- Referred to: Planning Commission
- Goal: Facilitate remediation of sites with toxic contamination by amending the Zoning Code to streamline demolition permitting for purposes of remediation.
- Status: Considered and Not Adopted by Commission

On September 4, 2019, the Planning Commission considered proposed changes to the Zoning Ordinance which would have allowed issuance of a demolition permit, under certain circumstances and with required findings, even in the absence of a proposed project to replace the demolished structure. Provisions already exist in Berkeley Municipal Code (BMC) Section 23C.08.050 to require remediation of toxic conditions on a site in conjunction with a proposed new development or reuse project, or in certain other specific circumstances when appropriate findings can be made. But current law also requires an approved project to replace the structures prior to issuance of a demolition permit. The current policy is consciously devised to tie permit applications which request

demolition of structures in order to remediate toxic conditions to a specific development project, not the creation of empty lots.

This referral was motivated by a situation where owners of a site at 2222 Third Street wanted to demolish the existing structures and remediate the known toxic conditions prior to deciding what replacement project to propose. In that case, the structures at the site were demolished using existing legal authority and findings, rendering the immediate goal of this referral moot. During the September 4, 2019 discussions, Planning Commissioners and staff could not recall any other actual cases which fit the conditions contemplated by the 2012 referral (proposing to demolish structures and remediate toxic soils within a manufacturing district without also proposing a subsequent development plan).

At that Planning Commission meeting, public comment was taken from stakeholders interested in preserving opportunities for light industrial and manufacturing types of uses in the West Berkeley Plan Area. The public and Commissioners worried that amending the Zoning Ordinance to allow demolition without a replacement project proposed, no matter how well-intentioned, could have negative effects on preservation of such uses by incentivizing demolitions without a commitment to new uses which were consistent with the Plan Area goals.

By a vote of 6-1-0-2, the Planning Commission directed staff to prepare a report to close-out the referral, since the conditions in which the referral was made are no longer relevant. (Ayes: Beach, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: Martinot. Abstain: None. Absent: Fong and Kapla.)

**Permit Streamlining for projects with 50% or more affordable units:**

- Original referral date: January 19, 2016 (see Attachment 2)
- Sponsor: Councilmember Worthington
- Referred to: City Manager (Planning Department)
- Goal: Facilitate affordable housing by reducing or eliminating discretionary permit review processes when a proposed project includes half or more affordable units on-site, with 20% reserved for Very Low Income households (those making 50% or less of the Area Median Income (AMI)).
- Status: Goals substantively met via State and City legislation. Senate Bill 35, authored by State Senator Weiner, was signed into law by then-Governor Brown on September 29, 2017. Among other requirements, SB 35 mandated streamlined, ministerial approval of any housing development proposing to include 50% or more units affordable to low income-households (those making 80% or less of the AMI). The City has given expedited approval to three projects proposed under SB 35 to date.

Berkeley Ordinance 7,573-N.S., authored by Councilmember Hahn and adopted on September 12, 2017<sup>1</sup>, requires expedited review of any proposed project which receives City of Berkeley Housing Trust Funds. Planning staff now prioritize and streamline the review of all such projects.

Since the 2016 referral contemplated a local program that required deeper affordability levels (50% or more of the units for very low-income households) than those required by the State in SB 35 (50% or more of the units at 80% for low income households), developers would have less incentive to opt for a local program.

Since state law largely addressed the streamlining, staff focused on incentivizing higher percentages of affordability. The Draft Adeline Corridor Specific Plan proposes to increase on-site affordable housing provided in market rate buildings through two paths: 1) by introducing new density standards that will generate a higher number of affordable units, even in market rate buildings when applicants choose to apply the State Density Bonus; and 2) by offering a new on-site affordable housing incentive, projects can produce an even higher share of affordable units in exchange for greater densities than current practice would allow. The City also issued an Administrative Regulation<sup>2</sup> that interpreted Government Code Section 65915(n) such that projects can build to the maximum Floor Area Ratio (FAR) if 90% of the units are offered as deed-restricted below market rate units for 55-years. These two local programs can be paired with SB-35 to both streamline and incentivize affordable housing projects.

**Ministerial approval for projects with 50% or more affordable units and/or receiving City Housing trust funding:**

- Original referral date: December 5, 2017 (see Attachment 3)
- Primary Sponsor: Councilmembers Droste, Bartlett, Worthington, and Mayor Arreguin
- Referred to: City Manager (Planning Department) and Planning Commission
- Goal: Facilitate affordable housing by conferring ministerial zoning approval for any project which received Housing Trust Fund monies, and/or includes half or more affordable units on-site, with 20% reserved for Very Low Income households.
- Status: Goals substantively met via State legislation. SB 35, described in more detail above, has the effect of removing discretionary zoning review procedures for projects in Berkeley which meet objective planning standards and which

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/09\\_Sep/Documents/2017-10-03\\_Item\\_03\\_Expedited\\_Review\\_for\\_Affordable.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/09_Sep/Documents/2017-10-03_Item_03_Expedited_Review_for_Affordable.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Local%20Density%20Bonus%20101519.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Local%20Density%20Bonus%20101519.pdf)

comprise half or more affordable units. Since this 2017 referral contemplated deeper affordability levels than those set in SB 35, developers would have no incentive to opt for a local program. As with the streamlining referral above, these goals are augmented by other recent City steps to clarify and implement Density Bonus regulations, which also help promote the goal increasing numbers of affordable units.

**Waive mitigation and impact fees for projects which receive City Housing Trust Funding, and encourage the Berkeley Unified School District (BUSD) to do the same:**

- Original referral date: September 12, 2017 (see Attachment 4)
- Sponsors: Councilmembers Hahn, Harrison, and Mayor Arreguin
- Referred to: City Manager (Planning Department)
- Goal: Lessen the cost of providing affordable housing by waiving mitigation and impact fees which can add substantial project costs.
- Status: Authority to waive such fees already exists. Within the City Zoning Ordinance, BMC Section 23B.24.040.C reads, in part: *“The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish.”* This authority has been used on several previous projects of public interest, including the Ed Roberts Campus, the Biofuel Oasis, and an AHA Affordable Housing project at 2500 Hillegass.

BMC Section 22.20.080 also provides authority to waive certain requirements when it states that:

- A. *Notwithstanding any other provision of this chapter, the requirements of this chapter in the discretion of the City may be waived or limited for a particular development project where both of the following findings are made:*
1. *The imposition of the mitigation and/or fees otherwise required by the City make the development of the particular project infeasible; and*
  2. *The benefits to the City from the particular development project outweigh its burdens in terms of increased demand for affordable housing, child care and/or public facilities, adequate employment training and placement services and/or amenities and/or other impacts which reasonably may be anticipated to be generated by and/or attributable to the development project.*

Finally, projects receiving City Housing Trust Funds are already exempt from Affordable Housing Mitigation fees, under BMC Section 22.20.065, part C.5, which states that “Units that meet the criteria established for affordable housing

rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee."

Pursuant to this Council request, staff is prepared to send a letter to the Berkeley Unified School District asking that it also consider provisions to waive its impact fees for projects of significant public benefit, such as affordable and/or teacher-focused housing.

**Ordinance to allow "Junior" Accessory Dwelling Units (ADUs):**

- Original referral date: May 2, 2017 (see Attachment 5)
- Sponsors: Councilmembers Wengraf, Harrison
- Referred to: Planning Commission
- Goal: Develop ordinance language for Council adoption which would allow Junior ADUs, as defined in the referral as "re-purposing a bedroom and ancillary space...to a maximum of 500 square feet (sf) of living space confined entirely within an existing single-family structure."
- Status: On January 21, 2020 the City Council extended an Urgency Ordinance governing ADUs through December 2020. This Ordinance fulfilled a state mandate that all cities adopt uniform provisions to regulate ADUs, as part of a state initiative to increase housing production in a variety of means. Among other provisions, the adoption of the state-mandated regulations require jurisdictions to ministerially allow Junior ADUs within existing or proposed single family dwelling, as requested by the referral.

The City Council will consider permanent ADU regulations, consistent with State law, later in 2020, following Planning Commission review and a public input process that will include provisions for Junior ADUs that meet the goals of this referral.

**Create Citywide Green Development standards by extending requirements of Downtown Plan throughout rest of Berkeley:**

- Original referral date: April 26, 2016 (see Attachment 6)
- Sponsor: then-Councilmember Jesse Arreguin
- Referred to: City Manager (Planning Department), Energy Commission, and Community Environmental Advisory Commission
- Goal: Require LEED Gold or higher green building ratings, revise parking requirements to encourage ride-shares, bicycle parking, and alternative transportation benefits for residents.
- Status: The adoption of the new state Building Code, effective January 2020, included groundbreaking state provisions and local amendments to require even higher green building standards than those contemplated in the 2016 referral. Some examples include new local Berkeley "Reach Codes" that now provide

pathways for construction that exceed the efficiency requirements of the state energy codes, appendices to allow alternative construction methods such as those using strawbale materials, and expanded solar photovoltaic requirements for both residential and nonresidential construction.

The parking reform portions of this referral, along with similar asks from the earlier “Green Affordable Housing” and other Council referrals, will come to Council for consideration in Spring 2020. Staff proposes to now close the referrals which largely pertain to construction, such as this one, and then to resolve the parking-related aspects of numerous referrals when the actions return to Council later in 2020.

**Berkeley “Deep Green” Building Initiative:**

- Original referral date: February 28, 2017 (see Attachment 7)
- Sponsor: Mayor Arreguin, Councilmember Hahn
- Referred to: City Manager (Planning Department), Energy Commission
- Goal: Develop program to support zero-net energy goal for existing and new buildings, and promote use of building materials and practices which are sustainably sources, less toxic, and more energy efficient
- Status: The adoption of the new state Building Code, effective January 2020, included groundbreaking state provisions and local amendments which strengthened the “CALGreen” mandatory state green building standards code. As described above, the new code adoption also included new local Berkeley “Reach Codes” to help exceed the efficiency requirements of the state energy codes, and provisions to allow alternative construction methods and expanded solar photovoltaic requirements for both residential and nonresidential construction.

The portions of this referral which pertain to existing buildings are being addressed under other existing referrals, including incentivizing residential energy efficiency and electrification (from Energy Commission April 24, 2018), revising the City Transfer Tax to incentivize energy and water efficiency (CM Harrison, Nov. 27, 2018), and evaluation and possible revisions to the Building Energy Saving Ordinance (BESO), each of which are expected to generate new policies for Council consideration later in 2020.

**Electric Vehicle Charging Infrastructure:**

- Original referral date: June 13, 2017 (see Attachment 8)
- Sponsor: Councilmembers Bartlett, Harrison, Hahn, and Wengraf
- Referred to: City Manager (Planning Department), Energy Commission
- Goal: Develop ordinance to require that new buildings include certain numbers of parking spaces and charging stations devoted to electric vehicles



- Status: The expanded “CALGreen” mandatory building standards mentioned above included specific requirements for parking spaces and EV charging infrastructure. For example, new single family structures must include raceways and wiring to support a future Level 2 EV charger in at least one parking space per dwelling unit, new multifamily structures must have 20% of their spaces so wired, and 80% of their spaces equipped for connecting raceways. Non-residential buildings now have requirements that 10% of spaces have raceways and wiring to support future Level 2 EV chargers, and 40% of spaces be readied with connecting raceways. In short, the EV charging requirements for parking spaces envisioned in the June 2017 Council referral have effectively been met.

### BACKGROUND

As of the end of 2019, the Planning Department is tracking 55 active long-term referrals for which the department is assigned primary responsibility. These include referrals to the Building and Safety Division, the Office of Energy and Sustainable Development, and in particular to the Land Use Planning Division, which staffs the Planning Commission. A significant amount of staff time is spent tracking the referrals and monitoring progress for the periodic reports requested by the City Manager’s Office, through which updates are provided to the Council twice each year. The referrals highlighted in this report have been addressed through a combination of changes to State law and local action by the Council, Commissions, and staff. Further, reducing the number of referrals for which tracking and reporting is required frees up staff resources which can be assigned to the additional policy goals sought by the referral authors.

### ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities associated with the delivery of this informational report. Many of the referrals worked on by the Planning Department have the potential to improve sustainable practices by increasing housing, improved green building and development practices, and improving energy efficiency, among many other areas.

### POSSIBLE FUTURE ACTION

Upcoming department responses to referrals which are expected for Council review and consideration in 2020 include:

- Parking policy reform for new development
- Environmental Impact Report (EIR) for the Southside area, toward the goal of enabling more student housing
- Zoning Ordinance amendments as part of the Zoning Ordinance Revision Project
- ADU Ordinance amendments
- Adeline Corridor Plan and associated EIR
- Recommendations from the Joint Subcommittee on Implementation of State Housing Law regarding objective density and development standards
- Cannabis equity program

Closing out eight previous referrals to the Planning Department

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- Additional Zoning Ordinance amendments for businesses
- Amendments to the Building Energy Savings Ordinance
- A “Pathway to Clean Energy” report and recommendations, focused on actionable strategies toward electrification in existing buildings

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff will identify the fiscal impacts for each of the referral responses listed in the above section.

#### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, (510) 981-7437  
Jim Bondi, Associate Management Analyst, (510) 981-7428

#### Attachments:

1. Toxic remediation referral, 5/1/2012; Planning Commission staff report and Planning Commission minutes, 9/4/2019
2. Permit streamlining referral, 1/19/2016
3. Ministerial approval referral, 12/5/2017
4. Waive mitigation/impact fees referral, 9/12/2017
5. Junior ADU referral, 5/2/2017
6. Citywide Green Development standards referral, 4/26/2016
7. Deep Green Building initiative referral, 2/28/17
8. Electric Vehicle Charging Infrastructure referral, 6/13/17

**Note: Attachments  
may be viewed  
online.**



Department of Planning &  
Development

April 23, 2020

To: Members of Boards and Commissions staffed by Planning & Development  
From: Timothy Burroughs, Director, Department of Planning & Development  
Subject: Update on status of board and commission meetings

Several of you, as well as permit applicants and other community members have inquired about when your board or commission will resume meeting.

On March 12, 2020, the City Manager, under her authority as the Director of Emergency Services, directed that meetings of boards and commissions be suspended for 60 days in order to help minimize the spread of COVID-19. Exceptions can be made for certain boards and commissions, such as the Zoning Adjustments Board, Landmark Preservation Commission, Planning Commission, and Design Review Committee, if there is time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

On April 13, 2020, the City Council Agenda & Rules Committee took an action to support continuation of the policy issued by the Director of Emergency Services and recommended that the policy remain in effect until COVID-19 conditions permit meetings to resume in a manner that maintains the health and safety of the community.

Based on this direction, City departments, including the Department of Planning & Development, are not authorized to schedule board and commission meetings, either virtually or in-person, at this time. While we understand that community members may be eager to move forward with certain land use projects or other policy considerations, we also appreciate community members' understanding that this is an unprecedented public health emergency, made worse by the fact that many people who have COVID-19 have no symptoms or mild symptoms, which means they are not aware they may be transmitting the virus to others. Our most important responsibility is protecting the health and safety of the community. Right now, that means maximizing the number of people that shelter at their place of residence.

In addition, many of the same staff responsible for preparing commission meeting packets and notices are serving as Disaster Service Workers in the City's Emergency Operations Center (EOC). Our response to COVID-19 is the top priority at this time. Staff who are not working in-person at the EOC are working from home, and our offices remain closed.

When board and commission meetings are authorized to move forward, there will be a lead-time that allows agendas to be finalized, applicants and interested parties to be contacted, and public hearing notices posted.

We appreciate your patience and understanding.

In the meantime, the Planning & Development Department has created new ways for community members to pursue building permits and land use applications electronically. [Our recent news release on available Planning and Development services](#) describes how you can apply for new land use permits, new building permits, continue work on previously submitted applications, and obtain many other services while sheltering in place.

For details, please see the specific instructions for pursuing [Land Use services](#) and [Building and Safety services](#), and please feel free to send any questions by email to [planning@cityofberkeley.info](mailto:planning@cityofberkeley.info).

The current Shelter-in-Place Order is in effect through at least May 3. The City of Berkeley will update its [Main News webpage](#) promptly with any new information.

We value your service to the city and we thank you for your support and patience as our community works through these challenging times. Please be safe.

Sincerely,

Timothy Burroughs  
Director, Department of Planning & Development

Shawn Drost and Lauren Locke-Paddon  
1278 Campus Dr.  
Berkeley, CA 94708  
May 18, 2020

To Berkeley's Planning Supervisors:

First of all, thank you for your public service, and for taking the time to read a letter from a constituent.

My wife and I are homeowners, motivated to help with Berkeley's housing crisis, and have put real time and money behind our good intentions by working to plan and permit an ADU and JADU. The JADU project is now on indefinite hold, after we were advised by planning staff that JADUs are not permitted in accessory structures or within unconditioned spaces (basements and attics) of a primary residence. I would like to advocate for the reversal of one or both of these conclusions. In this letter, I'll share more information about why this is a practical approach, seen widely across California, and a requirement for a JADU to work in our real-world example.

I'll start with some background on my family and our projects. My wife and I live at 1278 Campus Dr, which we purchased last year just before the birth of our first child. The property is a double lot with two structures, a residence and a detached garage. The residence, where we live now, has an unimproved, full-height basement. The detached garage is built on a hill, and in the understory, there is a legally permitted "playroom", with utilities, a kitchen, and a bathroom. The playroom was clearly used as a rental unit in the past, but is not approved as such. We would like to legalize the playroom as a rental unit, and establish a second rental unit in the basement of our primary residence.

I have briefly summarized the roadblocks we encountered, but I'll share more about our efforts to date and the various details. Both units fit most JADU requirements: sized under <500sf, converted from existing permitted structures, will not be used for short-term rentals. The roadblock is that neither of the two intended units would be allowed as a JADU, according to Berkeley's planning staff reporting on current practice. The permitted playroom is in a separate (accessory) structure, not the primary residence, and so it cannot be a JADU. The basement of the primary residence is not conditioned space, and so it cannot be converted to a JADU. (We cannot expand the primary residence to the basement, because that approach will require an AUP and an unwanted interior staircase, which would make the project financially infeasible. And, there is not space in the main residence for a JADU to sit side-by-side with our family, given the expansion restrictions.) We are open to a JADU garage conversion, or to constructing new structure for a JADU, but these are even larger departures from Berkeley's current practices, so we haven't explored those options too deeply.

**Lapira, Katrina**

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**From:** Pearson, Alene  
**Sent:** Friday, May 29, 2020 1:34 PM  
**To:** Pearson, Alene <[apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)>  
**Cc:** Lapira, Katrina <[KLapira@cityofberkeley.info](mailto:KLapira@cityofberkeley.info)>; Shen, Alisa <[AShen@cityofberkeley.info](mailto:AShen@cityofberkeley.info)>; Horner, Justin <[JHorner@cityofberkeley.info](mailto:JHorner@cityofberkeley.info)>; Greene, Elizabeth <[EGreene@cityofberkeley.info](mailto:EGreene@cityofberkeley.info)>  
**Subject:** RE: Planning Commission Meetings via Zoom

Dear Commissioners,

In pulling together the agenda for the July 1 meeting, I'm realizing that we are going to need a few extra meetings to catch up. Can you let me know your availability for two additional Planning Commission meetings: one on August 5 and one on August 19? Also, we are also considering an Adeline or ZORP subcommittee meeting on Wednesday, July 15. These meetings will all be virtual – and we'll have training in advance. More about that next week... Please get back to me by Wednesday, June 3 about your availability on these dates. Thank you and enjoy the weekend!  
Alene

**From:** Pearson, Alene  
**Sent:** Friday, May 15, 2020 3:17 PM  
**To:** Pearson, Alene <[apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)>  
**Cc:** Lapira, Katrina <[KLapira@cityofberkeley.info](mailto:KLapira@cityofberkeley.info)>  
**Subject:** Planning Commission Meetings via Zoom

Dear Planning Commissioners,

I hope you and yours are doing well and feeling safe while Sheltering in Place.

I am writing to provide an update on the status of Planning Commission meetings. As of May 6, the City Manager and Health Officer have authorized commissions to resume meetings to address time-sensitive items. Meetings will be held in a virtual format. In-person commission meetings are not authorized until further notice. Please see the attached memo that the City Manager provided to the Mayor and City Council.

The Land Use Division's Policy Group has been providing significant support to the COVID-19 Emergency Operations Center (EOC) since early March. Over the next six weeks, staff will be refocusing their efforts on Land Use Planning projects that facilitate housing production, support small businesses and update the Zoning Ordinance to remain in compliance with State laws. **We will not be holding a June 3 Planning Commission meeting, but are planning to hold a July 1 meeting.** We are also looking to convene an Adeline subcommittee meeting and a ZORP subcommittee meeting -- but need to reach out to commissioners to identify feasible dates.

All Planning Commission meetings and subcommittee meetings will be held as Zoom webinars, similar to the format currently being used by City Council. Zoom allows commissioners, staff, and members of the public to participate from their respective shelter-in-place locations and provides controls to the Chair and staff to maintain order during the meeting.

In advance of the first virtual meeting, staff will organize a training on online meeting facilitation and other logistics for the Planning Commission Chair and Vice Chair. We are also planning a practice meeting for the full commission, and will be drafting procedures/guidance documents for commissioners, staff and members of the public. In the meantime, please consider watching a [City Council meeting](#) to familiarize yourself with the technology.

I appreciate everyone's patience as we move forward and adjust to this new meeting platform. I will be in touch with additional information soon. If you have any questions or concerns, please feel free to reach out to me.

Best,  
Alene

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**Alene Pearson**

Principal Planner, Land Use Planning Division  
Planning and Development Department  
City of Berkeley  
[apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

I am no planning expert, but from what I can tell from some internet searches and Twitter conversations, some California municipalities are permitting JADUs in both accessory structures and unimproved basements/attics. We sit on a very large property, adjacent to a very large park, and frankly, there is space for as many units as Berkeley would like to permit.

Finally, since this is Berkeley, I want to share some opinions about justice :). Our neighborhood in the Berkeley Hills is one of the least dense in Berkeley, and in my personal opinion, the reasons for the low density are connected directly to Jim Crow-era practices like redlining and racial covenants. (True fact: to this day, our deed states that we cannot sell the property to any non-white person, or permit any non-white person to reside on the property.) I would like to see Berkeley work towards ending that legacy, so maybe if you are on the fence about densification policies like this, consider permitting them in areas that have successfully excluded residents for decades. Speaking more broadly, I'm sure I don't need to share everything I've heard about Berkeley's housing shortage, but I'll mention one that matters especially to me. I see UC Berkeley as a rare gem that can help young Californians accomplish their dreams, and its size is directly limited by the amount of housing we construct. (UC Berkeley is a short walk from our home along beautiful footpaths.)

Thanks again for reading, and please let me know if you have any questions.

-Shawn and Lauren



June 12, 2020

Berkeley Planning Commission  
Alene Pearson, Secretary  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704  
Via email to the commission clerk: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

Dear Berkeley Planning Commission:

As residents of Tyler Street, we are writing to seek your help in enforcing Berkeley's regulations relating to short-term rentals.

A property on our block (at 1500 Tyler Street) has been operating as a short-term rental without the required zoning certification, which they would be unable to receive because there is no permanent resident in the house. This runs contrary to the short-term rental ordinance.

This has become especially noticeable when the house is used – as it has been multiple times in the past six months, including twice already in June – for large and loud parties that often go until midnight or later. The noise and nuisance – and the potential to spread COVID with such large gatherings – however, are not the only problems. Rather, the bigger issue is that there is an unlicensed hotel operating on the corner of our block with an absentee hotel manager/landlord. This is precisely a situation the short-term rental ordinance was designed to prevent when it permitted short-term rentals only in homes that have a primary resident. There is no primary resident at 1500 Tyler.

The neighbor closest to the property, Thania Marin, has been in touch with the owner multiple times since February about the problem, as documented in the screenshots of text messages below. The owner has never come to the property to address the problems directly while they are occurring, nor has she stopped renting the house despite the frequent problems.

Additionally, the Planning Department has been aware of this code violation since at least February, as the attached correspondence between the department and another neighbor, Eli Zigas, shows. While we appreciate the responsiveness of the staff member with whom one of us had this correspondence, nothing has changed. It should not take five months to rectify a clear violation of the code.

Please don't let the short-term rental ordinance be meaningless with only voluntary compliance. The owners have not heeded the warnings of Planning Department staff and five months of continued and clear violation should be more than enough time for the Department to bring the property into compliance.

We would welcome having a long-term neighbor – either a resident or the pre-school that is being proposed. But, the current use of the house for short-term rentals is not something we can continue to accept – and we hope you won't continue to accept it either.

Sincerely,

Angela Gallegos-Castillo & Federico Castillo (1521 Tyler)  
Thania Marin (1504 Tyler)  
Amy Miller & Josh Rosen (1509 Tyler)  
Griselda Oliva (1520 Tyler)  
Ana-Belen Redondo-Campillos & Josh Kaufman (1506 Tyler Street)  
Cassandra Whitcomb (1516 Tyler)  
Eli Zigas & Savanna Ferguson (1517 Tyler)

CC:

Councilmember Cheryl Davila  
Timothy Burroughs, Director, Planning Department  
James Frank, Associate Planner, Planning Department

~~~~~

June 10, 2020

To Whom It May Concern:

I am writing to share my experience these past few months living in 1504 Tyler St, directly next door to 1500 Tyler St.

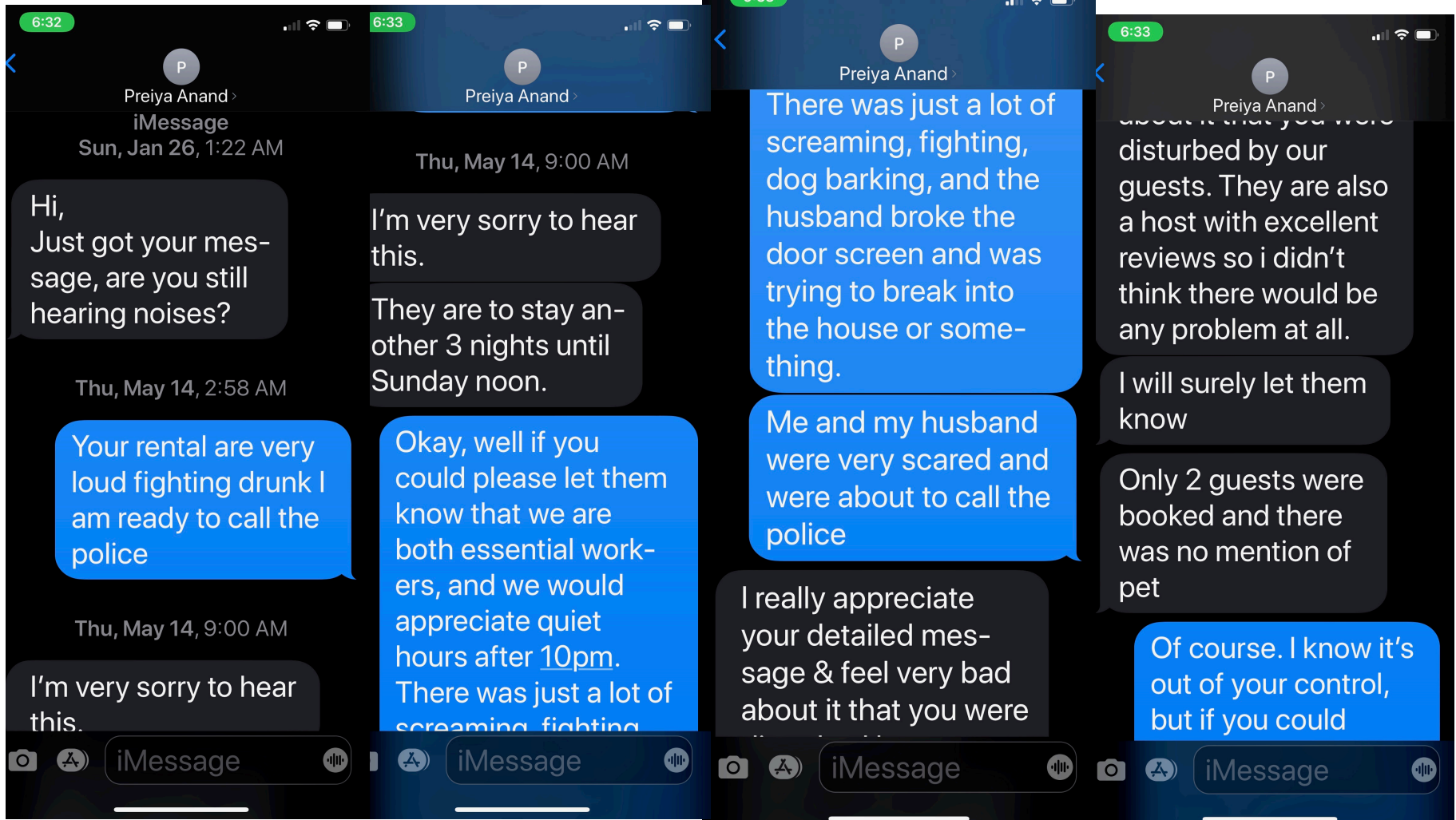
I have been communicating with the property owner, Preiyaa Anand, since January 2020 due to the various noise violations that occur on that property between the hours of 10 PM to 6 AM. I have included screenshots of my conversations with the owner, and her usual response is that she apologizes for the noise and states that the renter did not raise any red flags during the booking process. My bedroom is located right next to the neighbor's back yard, so I am constantly woken up in the middle of the night due to people throwing parties, people arguing, dogs barking, and people banging on the back door of the neighboring property. Despite my complaints, the owner has never come to the property during the night to reprimand renters for having noise violations.

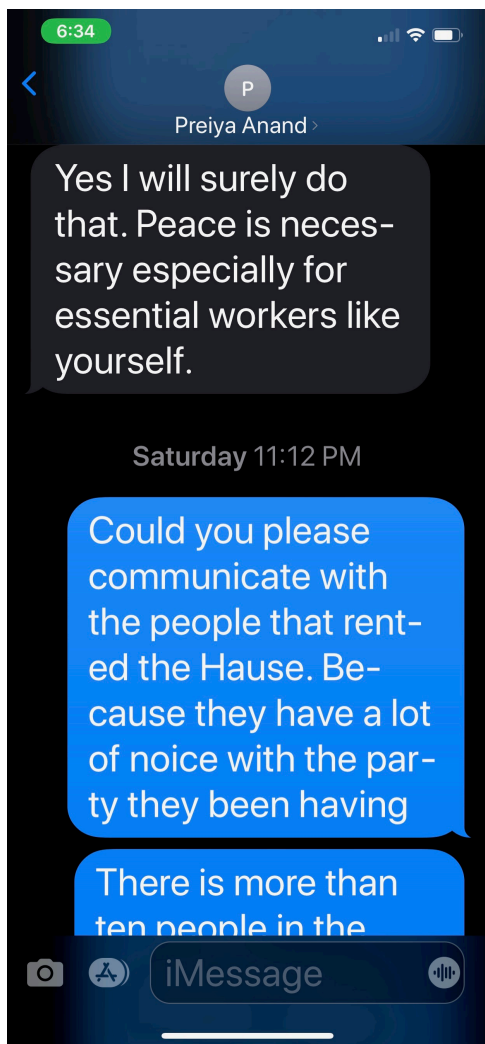
During a rental period in February of this year, it was past midnight and the renters were playing music around 1 AM, so I decided to open the window and ask the renters to turn off the music because it was late. The renter proceeded to call me a "Bitch," and he stated that he rented this property specifically for a party. I have also attached an image of a renter from this past weekend who had four cars illegally parked in the shared easement between my house and Preiya's property. I sent this image to the owner, and she did not even apologize this time, but simply stated, "Our bad luck this time. No red flags at booking time." In addition, I have attempted to call the phone number for non-emergency police matters, but due to COVID-19, the police do not have available officers to visit the neighboring property during these noise violations.

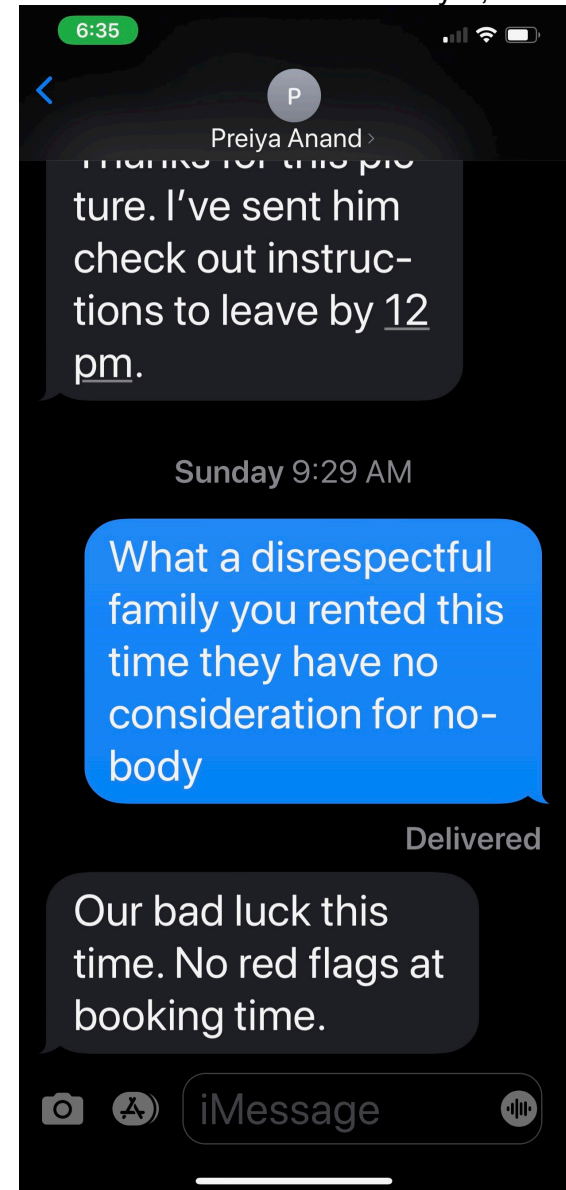
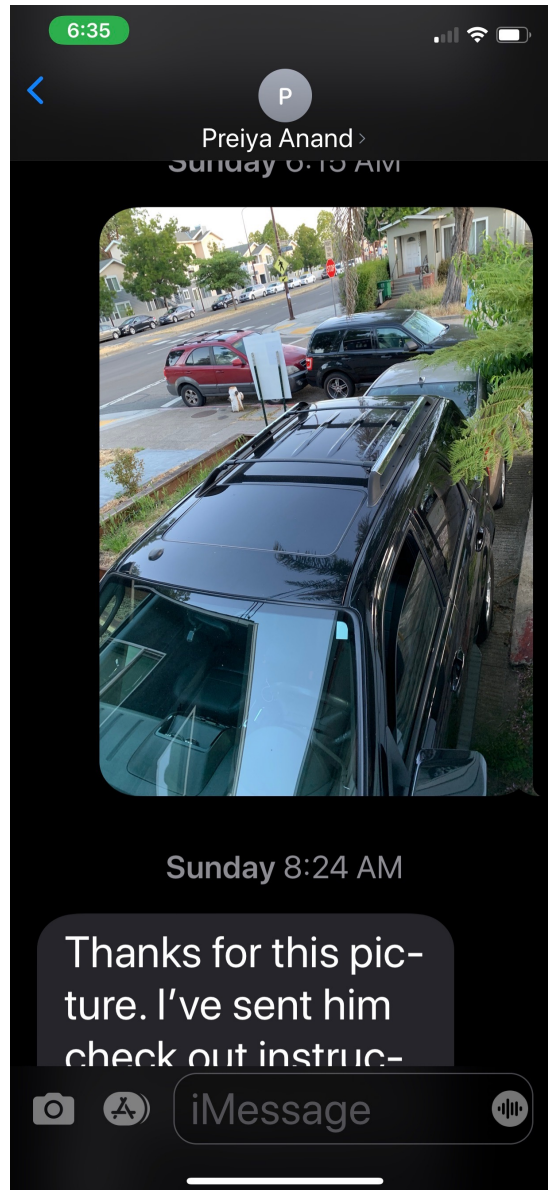
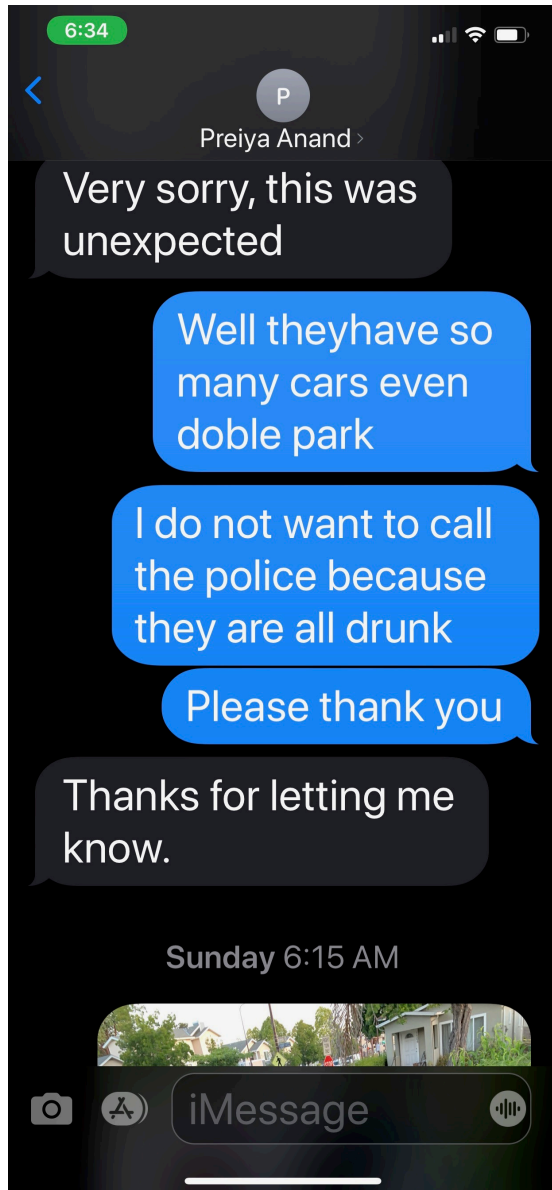
I really hope that our statements will change my situation because I need sleep! Please let me know if you have any questions or need further information.

Sincerely,

Thania Marin  
1504 Tyler Street







Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

Subject: Re: Following-up Re: Potential Violation of Berkeley Short-Term Rental law 1500 Tyler  
From: "Frank, James" <JFrank@cityofberkeley.info>  
Date: 6/1/20, 10:13 AM  
To: Eli Zigas <eli.zigas@gmail.com>

Thanks for bringing this to my attention. You are correct about the reservations. I will follow up with the owner.

---

**From:** Eli Zigas <eli.zigas@gmail.com>  
**Sent:** Sunday, May 31, 2020 3:51 PM  
**To:** Frank, James <JFrank@cityofberkeley.info>  
**Subject:** Following-up Re: Potential Violation of Berkeley Short-Term Rental law 1500 Tyler

Dear Mr. Frank:

Last night I noticed that there was a party happening at 1500 Tyler and it made me wonder whether the owner brought this property into compliance in the four months since we last corresponded. Based on [their Airbnb page](#), they appear to have rented quite a few times just in May making me think it's not been converted into a long-term rental.

I looked on the Berkeley zoning permits page and only saw the application for a pre-school, but nothing about a short-term rental permit.

Can you provide an update on where things stand with this property as it relates to short-term rentals?

Sincerely,  
Eli

Eli Zigas wrote on 2/5/20 11:09 AM:

Dear Mr. Frank,

Thank you for this additional information.

Sincerely,  
Eli

Frank, James wrote on 2/5/20 9:16 AM:

The City doesn't request the hosting platforms remove a particular host's site. I work with the host directly to bring them into compliance. There is no set time on when enforcement takes places.

---

**From:** Eli Zigas [<mailto:eli.zigas@gmail.com>]  
**Sent:** Tuesday, February 04, 2020 7:41 PM  
**To:** Frank, James <[JFrank@cityofberkeley.info](mailto:JFrank@cityofberkeley.info)>  
**Subject:** Re: Potential Violation of Berkeley Short-Term Rental law 1500 Tyler

Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

Dear Mr. Frank,

Thank you for the quick reply. I'm glad to hear that this home was already on your radar for violating the STR ordinance and that you've been able to engage the property owner. I hope that the owner will soon move the property into compliance. There have been a number of big parties at the property which I don't think someone who is renting it for two weeks or more would be likely to hold.

One question: how long does someone have to move into compliance (including getting a zoning certificate number) before you/the City alerts Airbnb and other platforms that the posting violates local law and should be pulled from the site?

Sincerely,  
Eli

Frank, James wrote on 2/4/20 1:25 PM:

Dear Mr. Zigas,

The property in question below has a hosting page for 1500 Tyler. I have sent them violation letters and have been in contact with the owner in order to bring things into compliance. The owner is intending to change the place into a long-term rental so that it will be compliant.

According to the BMC a short term rental is 13 days or less and therefore anything 14 days and over is considered long term. In following short term rentals for the past few months, I've seen many that post their homes for 14+ days on AirBnB.

---

**From:** Garcia, Analisa

**Sent:** Tuesday, February 04, 2020 1:03 PM

**To:** Eli Zigas <[eli.zigas@gmail.com](mailto:eli.zigas@gmail.com)>; Frank, James <[JFrank@cityofberkeley.info](mailto:JFrank@cityofberkeley.info)>

**Cc:** Customer Service <[customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info)>

**Subject:** RE: Potential Violation of Berkeley Short-Term Rental law

Hi Eli,

While I answer questions regarding STR registration, Jim Frank handles enforcement. I have copied him on this email.

Best,

**Analisa Garcia**



Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> floor  
Berkeley, CA 94704  
(510) 981-7439  
[agarcia@cityofberkeley.info](mailto:agarcia@cityofberkeley.info)  
(Gender pronouns she, her, hers)

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**From:** Eli Zigas [<mailto:eli.zigas@gmail.com>]  
**Sent:** Tuesday, February 4, 2020 12:59 PM  
**To:** ShortTermRental <[ShortTermRental@cityofberkeley.info](mailto:ShortTermRental@cityofberkeley.info)>; Garcia, Analisa <[AGarcia@cityofberkeley.info](mailto:AGarcia@cityofberkeley.info)>  
**Cc:** Customer Service <[customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info)>  
**Subject:** Fwd: Potential Violation of Berkeley Short-Term Rental law

Dear Ms. Garcia:

The Berkeley Customer Service staff have told me that you are the point person for enforcement of Berkeley's Short-Term Rental ordinance and that I should direct my concern about a potential violation of that law to you. At the bottom of this thread is my initial email from about 3 weeks ago detailing my concerns. Yesterday I checked on Airbnb and the home I'm concerned about is still actively listed for rentals.

Please let me know if I can get you any additional information or if there's someone else with whom I should raise this compliance issue. I look forward to any update you can provide after you're able to look into this.

Sincerely,  
Eli Zigas

[eli.zigas@gmail.com](mailto:eli.zigas@gmail.com)



----- Forwarded Message -----

**Subject:** RE: Potential Violation of Berkeley Short-Term Rental law  
**Date:** Tue, 4 Feb 2020 19:28:49 +0000  
**From:** Customer Service <[customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info)>  
**To:** Eli Zigas <[eli.zigas@gmail.com](mailto:eli.zigas@gmail.com)>

Dear Eli Zigas,

Please be advised that the Planning Department Land Use Division governs the Short Term Rental Program. I just called the Planning Division and they stated the temporary contact person for Short Term Rental is Analisa Garcia

Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

and she can be reached at (510) 981-7439.  
The Short Term Rental's email address is: [str@cityofberkeley.info](mailto:str@cityofberkeley.info) and  
Planning's main phone number is (510) 981-7410.  
Sincerely,  
Customer Service

---

**From:** Eli Zigas [<mailto:eli.zigas@gmail.com>]  
**Sent:** Tuesday, February 04, 2020 10:31 AM  
**To:** Customer Service <[customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info)>  
**Subject:** Re: Potential Violation of Berkeley Short-Term Rental law

Dear Customer Service,

Thank you for confirming receipt and getting back to me. I did contact that line and they are the ones who forwarded my original message to the City. I got a voicemail from someone in Berkeley city government (who didn't leave their name or contact number, so I couldn't follow up directly) who told me to send more detailed information to this email address.

If there's a specific staff person in the City of Berkeley who works on enforcement that I should reach out to, please let me know. Otherwise, I would appreciate if you could pass on the information I sent to whoever is most appropriate because I'm now at a loss as to who I should be reaching out to.

Sincerely,  
Eli

Customer Service wrote on 2/4/20 10:12 AM:

Dear Eli Zigas,  
Our office has received your inquiry. Please contact the 24 hour STR Compliance Line at (833) 300-0787 to report unpermitted short-term rentals, complaints or nuisance problems.  
Sincerely,  
Customer Service

----- Forwarded Message -----

**Subject:** Potential Violation of Berkeley Short-Term Rental law  
**Date:** Thu, 16 Jan 2020 12:37:14 -0800  
**From:** Eli Zigas <[eli.zigas@gmail.com](mailto:eli.zigas@gmail.com)>  
**To:** [customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info)

Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

Dear Berkeley Customer Service,

I received a call back from someone in your office yesterday after I had registered a complaint with the STR Host Compliance hotline. I was told to send an email to this email address by the person who left me the voice mail message, with more information about my concern about someone on my block breaking Berkeley's short-term rental (STR) law. I am not interested in starting a personal conflict with the landowner, so, to the extent possible, would appreciate not having my name or identifying information shared with anyone in relation to this complaint. I should also be clear that I have used STR lodging when traveling and support there being STR options in Berkeley, but also believe people should follow the rules because I don't want houses that could provide homes for long-term residents to be instead made into de facto hotels.

With all that said, here are the details of my concern:

A home on my block -- at the address 1500 Tyler Street -- is being used for short-term rentals, and I believe it is not following the rules for at least two reasons:

**1) I do not think the home has a permanent resident.**

As you can see in the attached screen shot from Zillow -- and I believe the MLS real estate listing will also confirm -- the home was recently renovated and put on the market for sale in the fall of 2019. It never sold. A "for-rent" sign went up in the window, but no one ever appeared to move in. Now the [home is being listed on Airbnb](#). The "host" on the listing is the same as the real estate agent who was marketing the home. And, based on some quick internet searching, I believe this same person is also one of the owners of the home, as they and one other person are listed as the officers of the LLC that is listed on the tax record for the house. I walked through the home when there was an open house and the real estate agent who is now the "host" on Airbnb never indicated she would be moving into the home -- and, so far as I can tell just from walking by and living nearby, I'd be very surprised if she, or anyone, lives there long-term.

I have attached documentation from:

- a) [Airbnb listing](#) (which shows recent reviews from when the home was rented in January)
- b) Website for marketing the home when it was for sale ([link here](#))
- c) Zillow screenshot showing property being recently put up for sale, removed from the market, put up for rent, and removed for rent

Re: Following-up Re: Potential Violation of Berkeley Short-Term R...

- c) Property tax assessment listing the LLC that owns the home
- d) A screen shot indicating who the officers of the LLC are

**2) The listing of the home on Airbnb does not have a zoning certificate number listed.**

At a base level - my understanding of Berkeley's law is that a home cannot be listed without providing its zoning certificate number. [The Airbnb listing](#) doesn't have this. I also tried looking through the Planning departments property information map/search tool and didn't see a zoning certificate for that property.

I'd be happy to discuss this further if it would be helpful.

Also, I'd appreciate if you could keep me updated on the status of this complaint and how it is ultimately resolved.

Sincerely,  
Eli Zigas

[eli.zigas@gmail.com](mailto:eli.zigas@gmail.com)