



Berkeley city council

CONSENT CALENDAR

October 27, 2009

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín, Laurie Capitelli and Mayor Bates

Subject: Referral to Planning Commission: Allowing Beer and Wine Service for Quick Service Restaurants in the Downtown

RECOMMENDATION:

Refer the proposed ordinance to the Planning Commission, amending Berkeley Municipal Code (B.M.C.) Section 23E.68.030 to allow beer and wine service for quick service restaurants in the C-2 Zoning District subject to an administrative use permit and request that the Planning Commission review the proposal and make a recommendation to the City Council within 90 days.

BACKGROUND:

The City Council received a presentation from Michael Caplan, Economic Development Manager in February on current economic conditions in Berkeley. One of the issues raised during that presentation was the high number of ground floor vacancies in the Downtown. According to the presentation, commercial vacancy rates in the Downtown area for the first quarter of 2009 were at 15.11%, some of the highest in the city.

One of the reasons for such high vacancy rates is the impact that the current economic crisis has had on businesses, causing some to close. This has also resulted in less sales tax and business license tax revenue which directly effects our General Fund and our ability to fund essential city services.

As a way to encourage new businesses to fill currently vacant commercial spaces and to provide more tax revenue to the city, the City Council on July 7, 2009 approved a set of amendments to the Zoning Ordinance to reduce the discretionary requirements for changes or establishment of certain commercial uses in the Downtown.

There are more restaurant uses in the Downtown than any other kind of business category. However, like other businesses many restaurants are struggling in this economy and need to be able to attract more customers and generate more revenue. One of the amendments that the City Council recently approved was to

make it easier for full service restaurants more than 200 feet from a residential district to get a zoning permit for beer and wine service.

Since the adoption of the zoning amendments, some quick service restaurants in the Downtown have submitted zoning applications to get approval for beer and wine service under the assumption that they would also be subject to a streamlined approval process.

However, the amendments that the City Council adopted did not make it easier for quick service restaurants to get zoning approval for beer and wine service. Right now such restaurants are subject to a use permit and public hearing before the Zoning Adjustments Board.

Amending the Zoning Ordinance to require an administrative use permit for beer and wine service for quick service restaurants rather than a use permit and public hearing will reduce the cost and time to get a permit and help these businesses attract more customers, which will ultimately result in more tax revenue to the city, which is consistent with the intent of the recent amendments to the Zoning Ordinance to streamline the permitting process for Downtown businesses.

Also, while this amendment would make it easier for quick service restaurants to get approval for beer and wine service, it would also allow anyone who disagrees with the staff level decision to grant an administrative use permit to appeal the decision to the Zoning Adjustments Board, still providing opportunity for public input on these applications, and if allowing beer and wine service for a particular business would result in safety and quality of life impacts, than the Zoning Board can add conditions to address the impacts or deny the application.

FINANCIAL IMPLICATIONS:

Unknown. Staff time will be involved in doing analysis and preparing reports for Planning Commission discussion.

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4	981-7140
Laurie Capitelli, Councilmember, District 5	981-7150
Tom Bates, Mayor	981-7100

Attachments:

1. Proposed Ordinance

ORDINANCE NO. – N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 23E.68.030 TO ALLOW BEER AND WINE SERVICE FOR QUICK SERVICE RESTAURANTS IN THE C-2 ZONING DISTRICT SUBJECT TO AN ADMINISTRATIVE USE PERMIT

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

Section 1. That Berkeley Municipal Code Section 23E.68.030 is amended to read as follows:

A. The following table sets forth the Permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is prohibited. For uses within the Downtown Arts District Overlay, also refer to Section 23E.68.040.

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title 23F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales	AUP*	Including Liquor Stores and Wine Shops
Department Stores	AUP*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)
Laundromats	AUP*	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Video Tape/Disk Rental Stores	ZC	

Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	
Medical Practitioners	ZC*	Including Holistic Health and Mental Health Practitioners
Other Professionals and Government, Institutions, Utilities	ZC*	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of alcoholic beverages incidental to food service. See exception listed below for certain full-service restaurants
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center	UP(PH)	
Dance, Exercise, Martial Arts and Music Studios	AUP*	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments:		Subject to additional requirements; see Section 23E.68.040.C
Carry Out Food Service Stores	AUP*	
Quick Service Restaurants		
If over 200 ft. from R-District with no alcohol sales or service	ZC	
If over 200 ft. from an R-District with on-site beer and wine service	AUP	<p>Note: A Use Permit Public Hearing is required for any of the following:</p> <ul style="list-style-type: none"> Quick Service Restaurants serving beer and wine that are 200 feet or closer to an R-District and restaurants Any quick service

		restaurants selling beer and wine for off-site consumption • Any quick service restaurants with sale or service of alcoholic beverages other than beer and wine
If 200 feet or less from an R-District	AUP	
Full Service Restaurants		
If over 200 ft. from an R-District with no alcohol sales or service	ZC	
If over 200 ft. from an R-District with on-site beer and wine service	AUP	Note: A Use Permit Public Hearing is required for any of the following: <ul style="list-style-type: none"> • Full Service Restaurants serving beer and wine that are 200 feet or closer to an R-District and restaurants • Any full service restaurants selling beer and wine for off-site consumption • Any full service restaurants with sale or service of alcoholic beverages other than beer and wine
If 200 ft. or less from an R-District	AUP	
Group Class Instruction for Business, Vocational or Other Purposes	ZC	
Gyms and Health Clubs	AUP	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Theaters, including Motion Pictures and Stage Performance	AUP	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service	AUP*	Including Parts Service
Automobile Sales and Rentals	AUP*	

Automobile Washes, Mechanical or Self-Service	UP(PH)	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores	UP(PH)	Including Sales and/or Service
Recreational Vehicle and Trailers Sales and Rental	UP(PH)	Including Boats
Tire Sales/Service Stores	UP(PH)	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building:		
When not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in uses	UP(PH)	Which provide service to customers in their cars
Parking Lots:		
Five or fewer Off-street Parking Spaces	AUP	
More than five Off-street Parking Spaces	UP(PH)	
Recycling Redemption Centers	AUP	
Sidewalk Cafe Seating	AUP	Subject to additional requirements; see Chapter 23E.24
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.68.070.D
Uses Incidental to a Permitted Use		

Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	AUP	
Live Entertainment	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Uses and Structures	As per R-5 District	See Table 23D.44.030
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-5 Standards	UP(PH)	Standards may be modified under Section 23E.68.070.E
Group Living Accommodations, subject to R-5 Standards	UP(PH)	Standards may be modified under Section 23E.68.070.E
Hospitals	UP(PH)	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23D.44.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing: Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Change of use of an existing dwelling unit
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service

Cafeteria, Employee or Residential	UP(PH)		
Cemeteries, Crematories, Mausoleums	Prohibited		
Circus or Carnival	UP(PH)		
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas	
Dry Cleaning and Laundry Plants	UP(PH)		
Kennels or Pet Boarding	Prohibited		
Laboratories, Testing	AUP*		
Mortuaries	UP(PH)		
Public Utility Substations, Tanks	UP(PH)		
Radio, Television or Audio/Sound Recording Studios	AUP		
Broadcast Studios	UP(PH)		
Warehouses or Storage including Mini-storage Warehouses	UP(PH)		
Wireless Telecommunications Facilities when located on site with existing facilities	AUP	Subject to the requirements of Section 23C.17.100	
When located on a site without existing facilities	Prohibited	Waiver may be granted if ZAB approves finding of necessity as required by Section 23C.17.100C	
Legend:	*Change of Use Requirements		
ZC -- Zoning Certificate AUP -- Administrative Use Permit UP(PH) -- Use Permit, public hearing required		<u>Sq. ft.</u>	<u>Permit</u>
	North, Oxford, South or West Sub-area †	10,000-15,000	AUP
		15,000+	UP(PH)
	Core Sub-area †	10,000-25,000	AUP
		25,000+	UP(PH)
† as identified in Downtown Plan			

B. Any use not listed that is compatible with the purposes of the C-2 District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-2 District shall be prohibited.

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table 23E.68.030. (Ord. 7105-NS § 2, 2009:

Ord. 7072-NS § 2, 2009; Ord. 6848-NS § 14 (part), 2005; Ord. 6671-NS § 7, 2001; Ord. 6669-NS § 1, 2001; Ord. 6644-NS § 2, 2001; Ord. 6525-NS § 1, 2000 (part); Ord. 6514-NS § 2 (part), 1999; Ord. 6478-NS § 4 (part), 1999)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

