



Office of the City Manager

CONSENT CALENDAR
June 10, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning

Subject: Amending Berkeley City Council Procedures on ZAB Appeals; BMC Chapters 23B.28 and 23B.32

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 23B.28.060 (Appeals of Decisions of the Zoning Officer to the Board) and Chapter 23B.32.060 (Council Consideration and Action on Appeals) to allow automatic public hearings on any appeal of a Board decision.

FISCAL IMPACTS OF RECOMMENDATION

There will be increased cost for mailing public hearing notices when an appeal is received instead of when Council sets the matter for a public hearing as is the case currently. This increased cost is offset by holding a City Council meeting on the topic one time instead of potentially two. There will be no increased cost for appeals of decisions of the Zoning Officer to the Zoning Adjustments Board, as the current practice is to automatically set these appeals for a hearing before the Board.

CURRENT SITUATION AND ITS EFFECTS

On January 21, 2014 the City Council requested the Planning Commission consider amending Section 23B.32.060 (Council Consideration and Action on Appeals) to allow for an automatic public hearing before the Council when an appeal of a Zoning Adjustments Board decision is received by the City. Staff requested that the Planning Commission also consider amending Section 23B.28.060 (Appeals of Decisions of the Zoning Officer to the Board) to reflect current practice of automatically setting these appeals for a hearing before the Board. The Planning Commission discussed the Council referral and staff's further recommendations at its March 5, 2014 meeting. On April 16, 2014 the Commission approved the proposed amendments on consent (Vote: Ayes: Novosel, Clarke, Davis, Lindheim, Lam, Murphy, Poschman, Sheahan; Noes: None; Abstain: None).

BACKGROUND

BMC Section 23B.32.060 currently gives the City Council the following options when considering an appeal of a Zoning Adjustments Board (ZAB) decision:

1. Affirm the ZAB decision;

2. Set the matter for a public hearing to be heard at a later date; or
3. Remand the decision back to the ZAB with specific direction regarding its reconsideration of the application.

In the past, the City Council did not allow public testimony during its consideration of an appeal pursuant to Section 23B.32.060. However, in 2008, the City Council began allowing public testimony prior to its consideration of appeals in order to allow the public an opportunity to testify on any agenized item. Therefore, this process allowed public testimony on ZAB appeals without benefit of a noticed public hearing, and where the Council determined to set the matter for a public hearing, it resulted in two hearings. The proposed appeal procedure will allow the City Clerk to set a public hearing before the Council upon receipt of an appeal of a Zoning Adjustment Board decision.

The City Council referral did not address altering the appeal process resulting from the Zoning Officer's decisions on Administrative Use Permits (AUPs). This is governed by BMC Section 23B.28.060 (Appeals of Decision of the Zoning Officer to Board) and is similar to Council appeals in that it gives ZAB the option of dismissing the appeal and affirming the Zoning Officer's determination or setting the appeal for a public hearing.

For the past two years, the Land Use Planning Division's practice has been to automatically set a public hearing upon receipt of an appeal of the Zoning Officer's decision rather than waiting for the ZAB to select that option. Staff implemented this practice because it is more efficient and because it provides better service to applicants and appellants. However Section 23B.28.060 has not been amended to reflect this practice. Therefore, staff recommended that the Planning Commission adopt an amendment to reflect current practice and to be consistent with the proposed City Council procedures.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

By amending Sections 23B.32.060 and 23B.28.060, the appeal process will be streamlined by automatically requiring public hearings rather than the potential two-step process that exists today.

ALTERNATIVE ACTIONS CONSIDERED

The Planning Commission did not discuss other options and approved the recommendations on consent, as summarized above under "Background".

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, (510) 981-7410

Attachments:

- 1: Ordinance
- 2: Planning Commission Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY CITY COUNCIL PROCEDURE ON ZONING
ADJUSTMENTS BOARD APPEALS AND ZONING ADJUSTMENTS BOARD
PROCEDURE ON ZONING OFFICER APPEALS; BERKELEY MUNICIPAL CODE
CHAPTERS 23B.28 AND 23B.32

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

Section 1. That Section 23B.28.060 of the Berkeley Municipal Code is amended to read as follows:

23B.28.060 Appeals of Decision of Zoning Officer to Board

A. Any person or entity aggrieved by a decision of the Zoning Officer may appeal the decision to the Board. Such appeal shall be made by filing one copy of a written appeal with the Zoning Officer during the appeal period. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.

B. The filing of a timely appeal stays issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn.

C. Upon the filing of a timely appeal the Zoning Officer shall set the matter for ~~consideration by the Board. The Board may affirm the decision of the Zoning Officer, dismissing the appeal or set the matter for a~~ public hearing at a future Board meeting.

~~1. In the event of a dismissal, the Board's action shall be issued in a Notice of Decision.~~

~~2. 1. In the event that the appeal is set for public hearing, a~~ Notice of the hearing shall be given, and the Board shall approve, modify or deny the matter in the time and manner for other public hearings by the Board on Use Permit applications. When the appeal is filed solely by the applicant, the fees for the public hearing, as set by Resolution of the Council, shall be paid by the applicant.

D. ~~In determining whether or not to set an appeal for a public hearing under this section, t~~The Board may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.

E. The decision of the Board may be appealed to the Council in the same time and manner and with the same effect as decisions of the Board with respect to Use Permits.

Section 2. That Section 23B.32.060 of the Berkeley Municipal Section Code is amended to read as follows:

23B.32.060 City Council ~~Consideration and Action on Appeals~~Public Hearing

A. The City Clerk shall provide the Council with the written appeal or appeals, ~~and shall schedule set~~ the matter ~~for a public hearing~~ before the Council in consultation with the Zoning Officer, ~~and give notice of the time and place of said hearing in the same manner and to the same recipients as for the Board hearing.~~

B. Before the hearing, the Zoning Officer shall forward the documents constituting the record on the matter to the Council. These shall include: copies of the Notice of Decision, indicating the Board's vote, and the findings and conditions approved by the Board; the Public Hearing notice; any and all reports made by the Zoning Officer to the Board; correspondence and letters received both by the Board or the Council submitted during the appeal process; and the Use Permit application and attachments. In the case of construction projects, the Zoning Officer shall also prepare a description in tabular form of the project as approved by the Board. The Zoning Officer shall also make a report to the Council on the Board's original action, including the issues raised at the Board's public hearing.

C. ~~Before the hearing, the Zoning Officer shall make a report to the Council on the Board's original action, including the issues raised at the original public hearing. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures.~~

D. ~~After opening the public hearing on the appeal, the Council may either take one of the following actions:~~

1. ~~Continue the public hearing from time to time or take an action;~~

2. ~~Based on the record of the Council's consideration and hearing, to reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board's original action; or;~~

3. ~~Remand the matter to the Board to reconsider the application, or any revisions thereto submitted after the Board's action, in which case the Council shall specify whether or not the Board shall hold a new public hearing, and which issues the Board is directed to reconsider.~~

E. ~~If the Council makes all of the findings required for the Permit before it and determines to grant the application, the City Clerk shall prepare a resolution reflecting the Council action and the Use Permit shall be issued forthwith.~~

F. ~~Except in the case of a remand to the Board, when reviewing any decision of the Board on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Board with respect to the matter on appeal. The Council may adopt the Board's decision and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council's decision.~~

G. ~~If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Board shall be deemed affirmed and the appeal deemed denied.~~

H. ~~The Council's action on the appeal shall be final.~~

B. ~~The Council shall review the action of the Board and may take one of the following three actions:~~

1. ~~If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer do not warrant further hearing, the Council shall affirm the decision of the Board and dismiss the appeal, in which case the application is approved, and the Zoning Officer shall issue the Use Permit;~~

2. ~~If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer warrant further hearing, the Council shall set the matter for a public hearing;~~

~~3. If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer warrant reconsideration of the application by the Board or if the applicant has submitted revisions to the application, the Council shall remand the matter to the Board to reconsider the application, in which case it shall specify whether or not the Board shall hold a new public hearing, and shall identify those issues which the Board is directed to reconsider.~~

~~C. If none of the three actions described above has been taken by the Council within 30 days from the date the appeal first appears on the Council agenda, then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.~~

~~D. In determining whether or not to set an appeal for a public hearing under this section, the Council may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.~~

~~E. The Council may require that testimony be under oath and subject to cross-examination by the appellant and the City Manager or his/her designee.~~

Section 3. That Section 23B.32.080 of the Berkeley Municipal Code is amended to read as follows:

23B.32.080 Council Public Hearing Certification of Use Permits by City Council

The Council may certify for its review any action of the Board granting or denying a Use Permit within 14 days from the mailing of the Notice of Decision of that action. Such certification to the Council shall stay all proceedings in the same manner as the filing of a timely appeal. Certification shall not require any statement of reasons therefore, and shall not represent opposition to or support of an application.

~~A. If the Council sets the appeal for a hearing, the City Clerk shall give notice of the time and place of said hearing in the same manner and to the same recipients as for the Board hearing.~~

~~B. The public hearing shall commence no later than 60 days from the date when the vote for a hearing is taken, unless, upon the request of the applicant and the appellant, the Council establishes a later date for the hearing.~~

~~C. Before the hearing, the Zoning Officer shall make a report to the Council on the Board's original action, including the issues raised at the original public hearing. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures. After opening the public hearing on the appeal, the Council may either continue the public hearing from time to time or take an action, based on the record of the Council's consideration and hearing, to reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board's original action.~~

~~D. If the Council makes all of the findings required for the Permit before it and determines to grant the application, the City Clerk shall prepare a resolution reflecting the Council action and the Use Permit shall be issued forthwith.~~

~~E. When reviewing any decision of the Board on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Board with respect to the matter on appeal. The Council may adopt the Board's decision~~

~~and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council's decision.~~

~~F. If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Board shall be deemed affirmed and the appeal deemed denied.~~

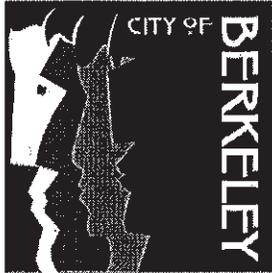
~~G. The Council's action on the appeal shall be final. (Ord. 6478-NS § 4 (part), 1999)~~

Section 4. That Section 23B.32.090 of the Berkeley Municipal Code is repealed.

~~23B.32.090 Certification of Use Permits by City Council~~

~~The Council may certify for its review any action of the Board granting or denying a Use Permit within 14 days from the mailing of the Notice of Decision of that action. Such certification to the Council shall stay all proceedings in the same manner as the filing of a timely appeal. Certification shall not require any statement of reasons therefor, and shall not represent opposition to or support of an application. (Ord. 6478-NS § 4 (part), 1999)~~

Section 5. 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.



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

APRIL 16, 2014

Recommendation to City Council: Amending Berkeley City Council Procedures on Zoning Adjustment Board Appeals

The Planning Commission, of the City of Berkeley, will hold a Public Hearing on the above matter, on **Wednesday, April 16, 2014**, 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.

PROPOSED AMENDMENTS: Modify the Berkeley Municipal Code (BMC) Chapter 23B.32.060 and Chapter 23B.28.060 to allow appeals of decisions by the Zoning Officer and the Zoning Adjustments Board to be automatically set for a Public Hearing.

ENVIRONMENTAL REVIEW STATUS: The proposed changes would be procedural changes and would not be considered a project pursuant to CEQA Guidelines, Section 15378. These changes are, therefore, exempt from CEQA.

PUBLIC COMMENT & FURTHER INFORMATION

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

Planning Commission

Pamela Johnson, Assistant Planner E-mail: pjohnson@CityofBerkeley.info

Land Use Planning Division

Telephone: (510) 981-7410

2120 Milvia Street

Berkeley, CA 94704

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, seven (7) days before the meeting.** For items with more than ten (10) pages, 15 copies must be submitted to the Secretary by this deadline. For any item submitted less than seven (7) days before the meeting, 15 copies must be submitted to the Secretary prior to the meeting date.

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. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions should be directed to Alex Amoroso, Secretary, Planning Commission, at (510) 981-7520, or aamoroso@CityofBerkeley.info.

