To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager
Timothy Burroughs, Director, Planning & Development Department

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

RECOMMENDATION
Refer to the Planning Commission modifications to the Zoning Ordinance that are designed to help modernize the ordinance and make the zoning review process for new or expanding small businesses easier, clearer, and more streamlined.

SUMMARY
In April 2017, City Council referred to the City Manager analysis of a number of policy and programmatic initiatives to support the City’s small businesses, including “streamlining of zoning, permitting and licensing requirements and processes.” Subsequently, staff from the Office of Economic Development (OED) and the Planning Department identified the following potential modifications to the Zoning Ordinance for the Council and Planning Commission to consider to make the zoning review process for small businesses less complex and time consuming:

1) Remove the parking requirement for a change of use for qualifying projects in C-prefixed districts;
2) Condense food services categories (i.e., quick serve, carry out and full service) to a single category and impose performance standards in cases where there would not otherwise be conditions of approval;
3) Standardize square footage thresholds that trigger various permits for “changes of use” and food service across all C-prefixed districts;
4) Standardize “uses deemed compatible” across all C-prefixed districts to the same level of discretionary review;
5) Expand the “commercial recreation” thresholds adopted for the Downtown across other C-prefixed districts; and
6) Allow the incidental service of beer and wine at a food service establishment via a Zoning Certificate in C-prefixed districts, and impose performance standards where there would not otherwise be conditions of approval.
These proposed revisions were chosen to reflect the input from the small business community and are seen by staff as relatively straightforward opportunities to modernize and improve the Zoning Ordinance to reflect present day conditions and community values. Each of these proposed modifications is designed to make the zoning review process for small businesses easier, clearer, and more streamlined.

**FISCAL IMPACTS OF RECOMMENDATION**

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

**CURRENT SITUATION AND ITS EFFECTS**

The Zoning Ordinance has evolved over decades to reflect Berkeley’s changing values and the changing landscape of property development and land use. Its requirements are intended to guide the City’s growth while preserving its existing character. However, businesses and people today operate differently than they did 20 to 50 years ago, and some of the current permit thresholds and ordinance requirements do not recognize these changes. This results in a permitting process than is sometimes lengthy and cumbersome, especially for small businesses.

Berkeley’s permitting process also reflects the community’s desire for citizen participation. Permit requirements and detailed consideration of neighborhood impacts are in place to allow for such participation. Moreover, this participation also provides staff with an understanding of changing community values and this has informed prior updates to the Zoning Ordinance. Since its last major overhaul in 1999, the Zoning Ordinance has been updated in large and small ways at least 14 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community.

Additional updates are needed today to reflect our continually changing city and to streamline the zoning permit review process for our business community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense. The modifications proposed here are designed with the unique needs and challenges of small businesses in mind.

In order to update our ordinance to better accommodate today’s locally-owned, small, independent enterprises that are highly desirable to our community, and to adhere to best practices in planning and sustainable economic development, staff recommends the six modifications to the zoning ordinance listed above to provide regulatory relief for small businesses in their establishment or expansion phases.
These changes are an important component of a broader effort to improve our organization’s embrace of our customer service and strategic plan goals to “foster a dynamic, sustainable, and locally-based economy” and “provide excellent, timely, easily-accessible service and information to the community,” while honoring the City’s commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

BACKGROUND
On April 25, 2017, the City Council referred to the City Manager a bundle of recommendations entitled the “Small Business Support Package” with the objective to “to support the establishment of new, and sustainability of existing small and/or locally owned businesses.” Among the strategies that Council asked staff to analyze and implement included “streamlining of zoning, permitting and licensing requirements and processes for small/local businesses and not-for-profits, to reduce associated costs and delays, and, where appropriate, provide less onerous levels of review.” In the Council’s annual referral prioritization exercise conducted in May 2017, the item was ranked as the Council’s top priority among the referrals not pertaining to housing.

Subsequently, during summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley’s small businesses and complied its findings in a worksession report and presentation to council on January 16, 2018. Small business owners and advocates identified the lengthy permitting review process as one of the primary barriers to small business startup and expansion in Berkeley. When asked how the City can improve its services for small businesses, in interviews, surveys, and at the December 2017 small business forum hosted by OED, respondents consistently cited “streamline permitting and zoning” as their top choice.

Over the first quarter of 2018, OED and Planning Department staff, with support from other staff sections, collaborated to identify potential modifications to the zoning ordinance that will streamline the review process for small businesses, while maintaining sufficient guidelines and discretion over impacts to neighboring commercial enterprises and adjacent residential districts. Staff also consulted with business district network leaders, and numerous individual owners and operators of Berkeley’s small businesses. Staff also considered recent experiences of business that decided not to locate or expand in Berkeley owing to our regulations or permitting process.

The goal of these zoning changes is to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. Each recommendation distills specific complaints, concerns, challenges, staff observations, and years of permit history data analysis into a concise change to the zoning ordinance designed specifically to alleviate long permit queues, clear up applicant confusion, and streamline the experience of doing business in Berkeley. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with the stated purpose of each of the commercial districts.4

Staff’s recommendations include the following elements:

1. **Remove the parking requirement for a change of use for qualifying projects in C-prefixed districts.** Currently, when a change of use occurs in a commercial district (e.g., from retail to food service or medical office) without any increase in square footage or change to the building exterior, the new use is required to provide the incremental difference between the two numerical parking standards, or apply for a parking waiver via an Administrative Use Permit (AUP). Typically, these parking waiver applications have come from small-scale, individually operated medical practitioners or food service providers without the capital on hand to withstand uncertainty and time delays during the startup process.

   The existing requirement to obtain a parking waiver through an AUP was added to the Zoning Ordinance in 2005 to promote the reuse of existing buildings regardless of any inconsistency with the parking requirements between the existing and proposed new use. Prior to 2005, a Variance would have been needed, which is a very high regulatory threshold and therefore made changes of use difficult. These parking minimums may induce demand for trips via single occupancy vehicles, which is counter to the City’s environmental goals and best practices in planning and economic development. Staff believes that additional changes to the parking requirements are warranted to add increased flexibility and to reduce timelines and expense for new uses in existing buildings. The Planning Commission should consider eliminating this requirement for certain qualifying projects. (e.g., beneath a threshold of 5,000 or 10,000 square feet).

2. **Condense three food service categories to one “food service establishment” classification.** In the Zoning Ordinance, there are currently three restaurant categories (carry out, quick and full service), describing activities involving the

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4 See Berkeley Municipal Code, C-SA South Area Commercial 23E.52.020 Purposes, including goals such as: “increase the opportunities for the establishment of businesses which are owned and operated by local residents, provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area, encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley” and C-E Elmwood Commercial District Provisions 23E.44.020 Purposes, including “providing locations for retail goods and service establishments to serve surrounding neighborhoods, and permitting other uses which serve this objective.”
consumption of food in Berkeley’s commercial districts. These categories were created when the City adopted the 1999 update to the Zoning Ordinance, which condensed several additional food categories into the categories that exist now (the expanded categories originated in the early 1980s to support commercial district-specific quotas). In 2015, the quotas themselves were removed in all commercial districts (save for the Elmwood which still maintains a cap on the total number, but not type, of food establishment). Currently, the application of these categories for prospective food purveyors can cause confusion for the public. By condensing all food consumption related categories into one, the definitions would align with the current quota-free commercial districts and provide increased clarity for small businesses. Along with this amendment, staff will recommend that the Zoning Ordinance be amended to impose performance standards for food services establishments.

3. **Standardize change of use square footage thresholds.** Currently in some C-prefixed districts, a change of use between 3,000-5,000 square feet necessitates an AUP but for other districts the range is 2,000-3,000 square feet; and above that threshold a change of use requires a Use Permit. This requirement adds additional requirements (and time) to the new use (and user) that is predicated on the previous use. A commercial change of use requirement based on square footage is atypical, and surrounding jurisdictions do not impose this level of scrutiny on neighborhood serving business, which could put Berkeley at a competitive disadvantage. Staff recommends that the Planning Commission consider standardizing change of use thresholds by either eliminating or raising the threshold to be the same for all C- districts.

4. **Standardize “uses deemed compatible” across all C-prefixed districts to the same level of discretionary review.** Staff has observed an increase in business models that employ a combination of retail and/or food consumption with entertainment, recreational activities, or other complementary uses. As the prevalence of online purchases for soft goods increases, these new, creative commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts. Experiential retail demonstrates an innovative way the local economy is adapting to a major national behavioral and technological shift. In several commercial districts, new experiential retail business models are subject to a Use Permit.

To remedy this, staff recommends amending the “uses deemed compatible” process for any District that requires a Use Permit to instead only require an AUP. An AUP allows community input and staff may condition approvals as needed to ensure these uses do not cause undue detriment. Also, Staff believes that this approach will continue to serve the community as the same standards for review apply to the AUP process as now for any Use Permit.
5. Expand the commercial recreation designation requirements adopted in the C-DMU (2016) across all C-prefixed districts. Staff recommends reducing the level of discretionary review for commercial recreation uses across all C prefixed districts in the same manner that was approved in the Downtown Core District (C-DMU) in 2016. Prior to this amendment, in the Downtown Core District a commercial recreation use of any size was subject to a Use Permit. The amendment allowed spaces with less than 5,000 square feet with a Zoning Certificate, and for spaces between 5,000 and 10,000 square feet with an AUP, but retained the Use Permit requirement for this use when over 10,000 square feet. Staff expects that the interest in this use will continue to go, and believes that this amendment will allow for this to occur while retaining the appropriate level of discretion for the larger spaces only.

6. Allow the incidental service of beer and wine at a food service establishment via a Zoning Certificate, and add standard conditions of approval as performance standards in the Zoning Ordinance. Presently an operator of a food service establishment must obtain an AUP to serve beer and wine. This review process is separate and in addition to the review process an owner or operator is subject to by Alcoholic Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol. This City of Berkeley permit is a Tier 4 AUP (approximately two to five months and $1,890 in fees); since 2013, 77 AUPs have been processed on this topic with two appeals (and six applications withdrawn by the applicant). Instead of subjecting food service operators to the AUP process in Commercial districts, which can backlog queues for planning staff, and cause uncertainty for food service purveyors, staff is recommending the incidental service of beer and wine at a food establishment be permitted via a Zoning Certificate, subject to to-be adopted performance standards (Attachment 1) which are approved by Berkeley’s law enforcement officials and in line with the best practices employed by the state ABC.

Next Steps
Each of modifications to the zoning ordinance recommended by staff will be considered by the Planning Commission in detail. Staff will present the Commission with information and case studies regarding each proposed change, as well as updated use tables and formulated ordinance language. These commission hearings will provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups.

ENVIRONMENTAL SUSTAINABILITY
Many of the City’s environmental sustainability goals are inextricably tied to the overall health of the City’s economy. Small businesses make up the bulk of Berkeley’s economy. Small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities to shop in neighborhood commercial

districts that are accessible by foot, bicycle and transit. Staff believes that the continued pursuit of environmental sustainability goals, as well as the programs and public policies that encourage that pursuit, represents a core economic strength for Berkeley and a competitive advantage of the City and the region.

RATIONALE FOR RECOMMENDATION
Berkeley’s commercial districts, and the small businesses that comprise them, are vital to the City’s economic, social and civic wellbeing. These zoning changes are designed specifically to support small independent operators seeking to invest and activate these districts, and will provide the community with needed goods and services. These changes also have the added addition of improving our internal permitting processes, by shortening timelines and improving customer service.

ALTERNATIVE ACTIONS CONSIDERED
Staff considered various other changes to levels of discretionary review and other zoning compliance review for commercial uses across all C-prefixed districts, but recommends starting with the modifications proposed here while continuing to gather input on additional changes moving forward. In the meantime, staff is also developing additional recommended zoning changes through the Zoning Ordinance Revision Project and other City Council referrals.

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Attachments:
1: Performance standards for beer and wine service incidental to food service (DRAFT)
ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

1. Alcoholic beverage service shall be “incidental” to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use. In addition, the California Department of Alcohol Beverage Control (ABC) allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.

2. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.

3. The applicant shall comply with ABC regulations for License Type 47, which requires that the food establishment operate as a bona fide eating place, make actual and substantial sales of meals during normal meal hours, and that the establishment operate at least five days a week. In addition, the applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:
   A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
   B. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
   C. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
   D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

4. A Berkeley Police Department Crime Prevention through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.

5. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.

6. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.

7. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
8. The service of alcohol shall be limited to the restaurant’s hours of operation. Patrons may only purchase food or finish drinks already purchased within the hours noted above. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

9. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.

10. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.

11. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.

12. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.

13. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

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

15. At no time shall the operator rent the restaurant space to a third-party promoter.

16. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.