



Office of the City Manager

01

WORKSESSION

April 7, 2015

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: Planning Commission Work Plan Recommendations

INTRODUCTION

The Planning Commission has engaged in an effort over recent months to adopt a more forward-looking approach to its responsibilities, while continuing to address referrals from the City Council and engage with the policy responsibilities in its purview. Following two meetings each of the Commission and an Ad Hoc Work Plan Committee, on January 21, 2015 the Planning Commission unanimously adopted a set of priorities to advance to the City Council, seeking affirmation of a Work Plan to set Commission priorities over the next two years.

CURRENT SITUATION AND ITS EFFECTS

Much of the work of the Planning Commission over the last two years has consisted of responses to numerous City Council referrals. While it has also engaged with other policy initiatives, such as the recently completed Draft Housing Element, the Commission has not been able to develop a Work Plan to proactively set priorities. The proposed Work Plan was adopted by the Commission on January 21, and is presented in the Commission report of that date, included as Attachment 1. This Work Plan represents the Commission's recommended priorities for the Council referrals which have not yet been addressed, as well as insights into broader areas of focus for the coming years.

BACKGROUND

The Work Plan recommendation creates a framework for prioritizing remaining Council referrals, and advances a guiding interest in prioritizing policies related to Economic Development in the coming two years. The Commission discussed the existing referrals and identified themes among them; housing and economic development encompassed the majority of referrals, with a few remaining single subjects such as specific Zoning Ordinance corrections.

During their discussions, the Commissioners came to several conclusions:

- The Commission work has focused extensively on housing related issues and referrals for the prior two years, including recommendations on: the Housing

Element, Accessory Dwelling Units, Mini-Dorms, State mandated SB-2 Homeless Shelter requirements, among others

- A substantial number of Council referrals on other subjects have been addressed including: the Civic Center Overlay, Distance Between Drugstores, C-SA zoning to allow car dealerships, Telegraph Avenue zoning amendments, Check Cashing store controls, among others.
- Commissioners expressed interest in setting a theme for their work. In particular, they agreed that a focus on economic development is appropriate and would support the City's focus on housing development.
- The Economic Development theme can support the entire Berkeley community by focusing on job and business growth, thus creating opportunities for all Berkeley citizens.
- The Commission desires to have more control over the direction and focus of their workload. In identifying the economic development theme and prioritizing related referrals, they hope to set their course for the coming two years.

#### Referral Priorities –

The January 21, 2015 Commission report includes the Ad Hoc committee staff report, containing a list of outstanding referrals split into two categories: housing related and other. Staff suggested a “low, medium, high” priority for each. The seven “housing related” referrals are clustered under one heading because staff anticipates a comprehensive referral, which will better define the range of issues to be considered. This report section focuses on the “other” referrals.

There are eleven “other” referrals listed, including: Elmwood Quotas, M District toxic remediation, check cashing store controls, electric car incentives, promoting economic development and new business, focused West Berkeley rezoning, tobacco free school zones, medical cannabis cultivation zoning regulation, medical uses zoning, water fountain installation at new development projects, AirBnB controls, and amusement arcade game definitions. A number of these referrals are in process with the Commission, but not yet complete. The Council has made additional referrals since the development of this list.

Of the existing referrals, the Commission considers the following list to be supportive of economic development, applicable to a broader community and therefore of higher priority:

- Elmwood Commercial District Quotas: The Commission is interested in addressing quotas, using the Elmwood District as a test case for a quotas method that might be applicable citywide. Currently each Commercial district's

quotas are distinct, complex and difficult to implement systems; a revised system might be useful across all commercial areas. Such a system could focus on the need to limit displacement of neighborhood retail commercial uses, while allowing opportunities for restaurants and other businesses.

- **Zoning Amendments to Encourage New Businesses:** The Commission is interested in working with the Office of Economic Development to create a list of Zoning Amendments supporting this referral. The amendments might include reduced levels of discretion, revisions and updates to definitions and use lists, and reducing change of use barriers.
- **Extend Commercial Zoning in West Berkeley:** This referral focuses on rezoning along Gilman Street and the end of the 4<sup>th</sup> Street commercial area. Rezoning in these areas could further support the existing (4<sup>th</sup> Street) and developing (Gilman area) commercial nodes. Options such as a “commercial without housing” overlay zoning may be an appropriate tool to manage change in these areas.
- **West Berkeley code revisions to expand Cannabis Cultivation and aligning medical uses within the M Districts:** These two referrals, while specific, identify a much needed review of West Berkeley zoning districts (M, MM, MU-LI, M-UR) definitions of uses, levels of discretion and other issues. The change in the manufacturing environment towards smaller artisanal and specialty businesses, smaller scale manufacturing and the need for useful incidental retail spaces are all issues to be addressed in supporting new economy manufacturing and jobs.

The language of the noted referrals is specific in nature and often focused on a single outcome. The Commission suggests that these referrals might be used to “tease out” a wider range of issues for discussion, creating a more effective set of outcomes and recommendations back to the Council.

#### ENVIRONMENTAL SUSTAINABILITY

While the Work Plan does not directly affect the sustainability of the City, many of the proposed zoning and General Plan amendments support the City’s Climate Action Plan and other sustainability goals. Creating a more diverse set of jobs, through economic development changes, could improve Berkeley’s jobs/housing relationships and support more Berkeley citizens working in their home town.

#### FISCAL IMPACTS OF RECOMMENDATION

The Planning Commission Work Plan uses already assigned staffing and resources to support Commission meetings, projects and ongoing work. There are no additional fiscal impacts.

POSSIBLE FUTURE ACTION

The City Council may direct staff to return with a future Action Calendar item to adopt the Planning Commission's proposed Work Plan for the next two years. The Commission requests that such action support its desire to prioritize a focus of work on economic development, to support building job opportunities for the incoming residents and workforce resulting from the many housing units currently being planned and built.

CONTACT PERSON

Alex Amoroso, Principal Planner, Planning & Development, 981-7520

Attachments:

- 1: PC staff report 1/21/15
- 2: PC minutes 1/21/15



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: January 21, 2015

TO: Members of the Planning Commission

FROM: Alex Amoroso, Principal Planner

SUBJECT: Planning Commission Work Plan

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### Background

The Commission received a Staff Report and list of outstanding Council Referrals on November 5, 2014, (see Attachment 1, Staff Report). At that meeting, the Commission decided to appoint an ad hoc committee to evaluate Work Plan options, prioritize the list of Council Referrals and report back to the Commission on January 21, 2015. The Work Plan Ad Hoc Committee, consisting of Commissioners Ben Bartlett, Tracy Davis, Harry Pollack and Gene Poschman, met on November 19, 2014, and December 7, 2014, (see Attachment 2, Staff Report). This report discusses the Ad Hoc Committee's input and recommendations for a draft Work Plan for the Commission.

### Discussion

At the meeting on January 17, 2015, Michael Caplan and Jordan Klein, from the Office of Economic Development, made a presentation about their work and priorities for the coming year; this presentation informed the Ad Hoc Committee's recommendations.

The Ad Hoc Committee asked that staff consider prioritizing economic development amendments and worked based on its return on investment. In other words, the proposed amendment should have a substantial benefit while not requiring excessive staff time to accomplish the task.

The committee expressed interest in economic development issues as a priority, because they see a link between strong economic development and housing development.

### Focus Areas –

The Ad Hoc Committee discussed the range of focus areas identified in the Staff Report and decided that a focus on economic development would be appropriate for the coming couple of years. This recommendation comes in light of the extensive focus on housing over the past two years (Housing Element, Accessory Dwelling Units, Homeless Shelter State Compliance, mini-dorms and others).

Within the broad issue of economic development, the Ad Hoc Committee suggested the following specific areas of focus:

- Review quotas Citywide, with possible recommendations for a comprehensive and simplified single system for those districts with quotas;
- Review of West Berkeley zoning issues to promote small manufacturing businesses, and address incidental retail;
- Address “change of use” issues that arise when existing buildings are occupied by a new use (parking, space allotments, level of discretion);
- Consider updating definitions and regulations to meet current standards, where business types may no longer exist, or function in the same manner (such as video stores).

#### Council Referrals Priorities –

The current/outstanding Council referrals are listed at the end of the January 7, 2015, Ad Hoc Committee Staff Report. They are separated into two sections: housing-specific and others. A synopsis of the referral name and priority is provided below, with further detail and staff reasoning provided in the body of the January 7, 2015, report.

#### *Housing Referrals Cluster*

Priority: Medium (group of 7 referrals)

#### *Other Council Referrals*

Priority: High:

- Elmwood Quotas
- Check Cashing Stores
- Promote Economic Development Downtown and Citywide

Priority: Medium:

- Manufacturing Districts Toxic Remediation
- Reconcile West Berkeley Zoning and Medical Uses
- Install Water Fountains and Filling Stations in Commercial Developments

Priority: Low:

- Electric Car Incentives
- Extend Commercial Zoning along Gilman Street
- Tobacco Free School Zones
- Expand Medical Cannabis Cultivation
- Telegraph Avenue Zoning Changes

#### Other Areas of Focus –

The Ad Hoc Committee also identified work they would like to undertake intermittently throughout the year:

- Work with staff to identify Zoning Ordinance amendments to streamline processes, address outdated terminology, and reduce levels of discretion where appropriate;
- Set ad hoc committees to meet a couple of times each year to assess progress and identify any new priority focus areas;
- Hear presentations from the Office of Economic Development, or other parties, to help focus Commission work.

Recommendation and Next Steps

Staff recommends:

1. Forward a prioritized list of Council referrals, with any changes to staff's proposed priorities;
2. Suggest a Work Plan focused on economic development priorities and Zoning Ordinance clean-up/streamlining, with some specific areas of interested identified.

Staff will prepare and submit the proposed PC Work Plan for Council review in April, 2015.

Attachments:

1. PC Report dated November 5, 2014
2. Ad Hoc Committee Staff Report dated January 7, 2015







Planning and Development Department  
Land Use Planning Division

**Item 10**  
November 5, 2014

## STAFF REPORT

DATE: November 5, 2014  
TO: Members of the Planning Commission  
FROM: Alex Amoroso, Principal Planner  
SUBJECT: Work Plan

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### BACKGROUND

The Commission received a Staff Report and list of outstanding Council Referrals (Attachments 1 and 2) on September 17, 2014. This report and discussion is prompted by both staff and Commission desires to have a more directed Work Plan and include subjects of interest to the Commission. Much of this process starts with the Referrals list. That list may hold opportunities for broadening and enhancing topics. Staff asks that the Commission consider the discussion section of the report and offer input to guide staff in the development of a Work Plan.

### DISCUSSION

The outstanding Referrals vary by type; some are location specific, while others identify district or City-wide issues to be addressed. Many are refined to the Council's particular interest and direction at the time they were drafted. Staff's duty is to provide information on each Referral, in accordance with its direction. The Commission can respond to the Referral and staff's work in a number of ways:

- Initially, ask staff to re-prioritize the Referral, and focus to other priorities;
- Direct staff to develop ordinance language or other appropriate response to the Referral;
- Send response to the Council asking for modification of the Referral, or recommending that no action be taken.

The Commission has taken each these actions previously in response to various Referrals.

### Work Flow and Capacity

Several components of the work flow and process remain consistent:

- Generally, the Commission meets approximately twenty times each year;
- Policy staffing is limited to approximately 2.5 full time positions, spread over several staff people;

- Any Referral response has a process cycle which takes about three to five meetings; some may take longer depending on the breadth of the subject area and outside input from the affected community.

In addition, more urgent or critical Referrals can redirect work flow and take priority over work in progress. These consistent pieces have shown that staff is able to work on and bring forward approximately six to eight Referral responses in any calendar year. The Commission works through about the same number to conclusion and recommendation to the Council.

Given these parameters, staff plans to draft a Work Plan that brings forward a couple of items at a time, allowing both staff and Commissioners to adequately focus attention on the subjects at hand. Spreading too thin over several subjects tends to diffuse the ability of available staff, and adds time to completing the Referral.

#### Opportunity to Affect Referrals and Work Plan Scope

As noted above, the Commission has the option to respond to any Referral, as well as the overall list. The following are some paths the Commission may choose:

- Recommend to staff, a priority order of the existing Referrals;
- Respond to the Referral with zoning language or other necessary work as directed, and request an expanded Referral on the subject area. One example of this is the Commission's request to reconsider the mini-dorms issue, which the Council has referred back.
- Suggest subjects which could "match-up" with existing Referrals, to expand the capacity and affect the outcome. For example, the Referral to rezone for more commercial along Gilman Avenue could prompt a discussion of criteria or methods to allow, but also limit retail to specific areas.

These approaches may help the Commission in expanding the Referrals to better suit the known needs and outcomes. For example, the residential outdoor glare Referral could be a two part response where the Commission acts on the Council Referral and requests that the coverage of the Referral be expanded to include all outdoor lighting sources in residential contexts (landscaping lights, etc.).

#### Other Areas of Focus

Staff plans to bring forward changes to the Zoning Ordinance (ZO) that address roadblocks, are outdated text, or address subjects no longer of concern (for example, the City still regulates video stores). These sorts of ZO changes can help facilitate application processing and allow staff to focus more time and attention on complex projects.

Staff will be bringing updates on the Adeline Avenue Corridor study as it progresses; there will be opportunities for input and policy suggestions.

#### CONCLUSION

Staff asks that the Commission do the following:

- Identify top priorities in the existing set of Referrals;

- Suggest any additional work, either Referral related or independent, that the Commission deems important for consideration by the Council;
- Name broad subject areas, or particular areas of interest and community need, which might prompt a Referral request to Council.

These inputs and suggestions can help staff in drafting a Work Plan for Council consideration.

Attachments:

1. PC Report 9/17/14
2. Referrals Attachment, 9/17/14





Planning and Development Department  
Land Use Planning Division

**Work Plan Sub-Committee**  
January 7, 2015

## **STAFF REPORT**

**DATE:** January 7, 2015

**TO:** Work Plan Sub-Committee Members

**FROM:** Alex Amoroso, Principal Planner

**SUBJECT:** Consider Work Plan Subjects and Prioritize Council Referrals

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### **Introduction**

The Work Plan sub-committee met on November 19 and discussed work plan options for 2015. The sub-committee requested that staff return with input from the Economic Development staff, a set of subjects to consider as work plan projects and a prioritized list of the current Council referrals.

In response, staff provides the following:

- Jordan Klein from the City Office of Economic Development will be available to speak with the sub-committee at this meeting to discuss economic development issues.
- A set of specific zoning issues and programmatic ideas are identified for the consideration
- The Council referrals are provided with a “high, medium, low” ranking and reasoning for each.

### **Discussion**

#### PC Work Plan 2015 Ideas for Discussion:

Staff has identified several areas of potential interest for the sub-committee to consider as parts of the work plan. Each section includes proposed process and short list of ideas for consideration. Commission can pick one or two areas of interest for recommendation and staff's focus. These would be mixed with referrals (higher priority) and twice yearly clean-up amendments.

While several of the proposals are in more vague terms, the Planning Commission as a whole could consider and refine direction if the area of interest is recommended by the sub-committee. The “Zoning Ordinance Refinements and Clean-ups” is an important ongoing project, so staff recommends that at least twice yearly meetings of a sub-committee be focused on identifying useful zoning amendments.

### Focus on Economic Development

Strategy: Report from Economic Development staff to identify priority zoning ordinance changes supporting business improvement and development in Berkeley

Some examples of changes in the Zoning Ordinance based on staff experience:

- Parking waiver for new businesses with higher parking requirement than existing use (such as restaurants) by putting in bike parking instead of requiring an AUP fee and process.
- Allow Neighborhood Commercial (C-N) uses within legal non-conforming commercial buildings located in R districts (i.e. re-introduce the corner market in the dozen or so former corner-market buildings scattered around town); for example, the strawberry creek design center.
- Modify definition of *incidental* use to allow occasional activities that use the entire floor area, such as for performances, limited-duration and frequency sales, etc. Get rid of the 30% gross receipts concept for incidental uses; require food service at all times when beer/wine is incidental. (this one is more complex..)
- Allow by-right minimal controlled sale of food produced on-site for OFF-SITE consumption only. Limited hours.
- Changes of use – no longer require a discretionary permit just because of the size of the tenant space.
- Evaluate and recommend quota reductions or suspensions?
- Address parking requirements at change of use issue?

### Focus on Housing

- Review R-4 and R-5 Development standards; setbacks and other development standards affect site development.
- Assess and revise Node development areas in UASP and San Pablo Avenue.
- Revise Density Bonus ordinance to reflect current implementation of projects.
- Address new Council referrals regarding Housing.
- Finish Mini-dorm referral regarding regulations placement in the Zoning Ordinance.

### Focus on West Berkeley

- Address unanticipated consequences of 2012 zoning changes, including: Retail component of demised buildings; R&D definition review and revise if necessary
- Increase live /work densities?
- Review MUP parameters and make recommendations for change
- Allow by-right light manufacturing or food production in MUR up to a certain size. Maybe light manufacturing by-right up to 5k in all M districts. Example – cold brew coffee business at 800 Bancroft.

### Focus on Zoning Ordinance Refinements and Clean-ups

**Strategy:** PC sub-committee meets with staff twice yearly to identify a set of priorities. Staff addresses zoning issues and brings back package of draft modifications for consideration.

**Specifics:**

- Refine Group Living Accommodation (GLA) definitions and regulations – replace mini-dorms

### Priority Development Areas (PDAs) updates:

- Review PDAs and recommend changes to CC (expansions, changes to intensity of development)
- Suggest projects in PDAs: modify SPA node designations;

**Council Referrals:** The referrals list with priorities follows the end of this report.

### Conclusion and Next Steps

Staff requests direction from the sub-committee about which zoning subject areas to pursue and priorities for the referrals list presented below. Staff will compile input and produce a staff report for Planning Commission consideration on January 21, 2015..

### Attachments

1. Referrals List attached below

### Housing Related Referrals

#### 4. Affordable Housing Mitigation Fee

**From: City Manager**

**Recommendation:** Maintain the Affordable Housing Mitigation Fee as adopted in Ordinance 7,192-N.S. and Resolution 65,920-N.S. and amended by Resolution 66,015-N.S., with no additional exemptions.

**Financial Implications:** None

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

**Action:** Approved recommendation.

#### Referral to City Manager: Changes to the Municipal Code Regarding Affordable Housing Requirement Implementation (Continued from October 15, 2013)

**From: Councilmembers Arreguin and Capitelli**

**Recommendation:** Refer to the City Manager and Housing Advisory Commission: 1. The proposed changes to Berkeley Municipal Code (B.M.C.) Section 22.20.065, relating to affordability requirements and implementation of the Affordable Housing Mitigation Fee. Request that the City Manager and HAC review these concepts and provide a recommendation to the City Council on possible changes to the ordinance. 2. Requesting a report from the City Manager about how staff implement the provision allowing for reductions or waiver of fees, B.M.C. Section 22.20.080, including: a. What information is requested of the applicant to provide “satisfactory factual proof” that the waiver/reduction is a “hardship”? b. What process does city staff go through to determine how fee requirements make a project “infeasible”? What standard does the city use to determine “infeasibility”? The report should also explore requiring that the applicant pay for a third party to evaluate financial information to determine how the fees affect financial feasibility. The City of San Carlos requires the applicant to pay for a third party to evaluate their pro forma to determine whether the fee would make the project infeasible.

**Financial Implications:** Unknown

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

**Action:** Recommendation #2 from Item 19 moved to the Consent Calendar.

[Zoning Amendments to BMC Chapter 23C.08 - Demolition and Dwelling Unit Controls](#) (Continued from June 4, 2013)

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Sections 23C.08.020 and 23C.08.030, and adding Section 23C.08.035 to modify and clarify the conditions under which dwelling units may be demolished.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

**Action:** 7 speakers. M/S/C (Bates/Wengraf) to direct staff to return with alternative language for 23C.08.020A.4. and 23C.08.020A.5. to provide two options:

- 1) Pay an in-lieu fee for each demolished unit vacant at the time of demolition equal to the Affordable Housing Mitigation Fee, currently set at \$20,000 per unit, or
- 2) Provide a deed restricted replacement unit whose initial rent shall be the last known rent of the unit prior to demolition, or if the rent is unknown, or if the unit was vacant for more than five years prior to demolition, the initial rent shall be set at a level affordable to a tenant at 50% AMI and will be rented to a tenant who meets such income qualifications. After the initial tenancy, vacancy decontrol shall apply pursuant to the Costa –Hawkins Rental Housing Act.

Sitting tenants will be protected as described in Section 23C.08.020 C.

All replacement units, whether vacant or occupied at the time of demolition, will be deed restricted such that rents for those units may only increase by the same amount as the annual general adjustment published by the Berkeley Rent Stabilization Board each year.

**Vote:** Ayes – Maio, Moore, Anderson, Capitelli, Wengraf, Bates; Noes – Worthington; Abstain – Arreguin, Wozniak.

[Zoning Amendments to BMC Chapter 23C.08 - Demolition and Dwelling Unit Controls](#) (Continued from June 11, 2013)

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Sections 23C.08.020 and 23C.08.030, and adding Section 23C.08.035 to modify and clarify the conditions under which dwelling units may be demolished.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

**Action:** Referred the original ordinance and the revised ordinance to the Housing Advisory Commission and the Planning Commission for consideration.

[Referral to City Manager: Exemption of Fire-Damaged Buildings from Affordable Housing Mitigation Fee](#) (Continued from January 21, 2014)

**From: Councilmembers Arreguin, Anderson, and Worthington**

**Recommendation:** Refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the applicability of the Affordable Housing Mitigation fee to buildings destroyed by fire.

**Financial Implications:** Staff time

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

**Action:** 1 speakers. M/S/C (Arreguin/Worthington) to refer to the City Manager and Housing Advisory Commission (HAC) issues relating to the assessment of an "Impact Fee" to buildings destroyed by fire under certain circumstances (listed below) and remove reference to Affordable Housing Impact fee. Also, to refer the proposal of raising the fines assessed for housing code violations.



1. Buildings that are destroyed by fire and are entirely demolished and rebuilt are not subject to rent control, and displaced tenants are not eligible for assistance under the Relocation Ordinance. The Planning Commission is considering amendments to the Demolition Ordinance to remove barriers to the demolition of housing units if the loss of affordability is mitigated and tenants are protected. Unfortunately under BMC Section 23C.08.020.A.1 most fire-damaged buildings that are red-tagged can receive an emergency demolition permit by the Building Official, under the proposed amendments to the Demolition Ordinance those buildings would not be covered by the affordable unit replacement requirements and tenant protections in BMC Sections 23C.08.020.A4, and B & C.

Staff as part of the Demolition Ordinance amendments being considered by the Planning Commission should require that buildings that are destroyed due to the "fault" of the owner including gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction, should be required to comply with the replacement unit provisions, tenant protections and relocation requirements under Sections 23C.08.020.A.4 and 23C.08.020.B and C.

2. To Amend Resolution No. 65,920 to include the following in the definition of "fault" for the Impact Fee: *"For purposes of this ordinance, the term "fault" should include not only intentional acts of the property owner, but also gross negligence or other conduct by the owner or his/her agents which constitutes the predominant cause of the destruction"*
3. In determining gross negligence, staff should base its decision on documented code violations including housing code (RHSP), building code or fire code violations, which were determined based on a city inspection and to which the owner was cited and did not correct.
4. As part of any nexus study to be commissioned for the affordable housing requirements in the revised Demolition Ordinance, staff should also request that the consultant study establishing an affordable housing fee for older housing destroyed by fire, and look at the difference in affordability between the cost of older housing and newly constructed units.

**Vote:** All Ayes.

#### Imposing Fees When Multifamily Properties are Destroyed Due to Fault of Property Owner

**From:** City Manager

**Recommendation:** Take no action on the recommendations contained in the Housing Advisory Commission's Report until a Nexus Study provides a fee analysis for demolition/replacement housing situations.

**Financial Implications:** None

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

**Action:** 0 speakers. M/S/Failed (Worthington/Arreguin) to adopt item 56.a. as written.

**Vote:** Ayes – Anderson, Arreguin, Worthington; Noes – Capitelli, Bates; Abstain – Maio, Moore, Wengraf, Wozniak.

**Action:** M/S/C (Bates/Maio) to refer the Housing Advisory Commission recommendations to the City Manager for analysis.

**Vote:** All Ayes.

#### City Manager Referral: Develop Policy to Prioritize Permit Review and Approval for Property Owners Rebuilding After Fire Damage

**From:** Councilmember Worthington

**Recommendation:** Refer to the City Manager to develop a policy to prioritize permit review and approval for property owners who rebuild after fire damage to their property in order to prevent fire-damaged properties from becoming blighted due to lengthy permitting procedures.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** Approved revised recommendation to request the City Manager to review the referral and provide a recommendation to the City Council.

**Vote:** Ayes – Maio, Moore, Anderson, Arreguin; Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – Capitelli.

**Staff Comment:**

There are seven (7) Council referrals focused on housing affordability, unit retention and replacement. The Council is expected to consider a Housing Nexus study and fee in March 2015. The fee will affect the discussion of this set of referrals, some of which are competing on the same subject. Staff suggests that the Commission ask the Council for a revised set of referrals, based on all the subject areas, but more integrated and with a clear sense of direction. Without a clearer path, these referrals cannot be appropriately prioritized as part of the Work Plan.

As a whole, housing unit retention and preservation is an important issue, so can be a higher priority in the referral list, once the direction is better understood. The current list of referrals do not address Zoning Ordinance issues directly, so should not be considered a priority for Commission action.

**Other Council to PC Referrals**

The following list includes the remainder of Council referrals to the Commission. Each referral has been identified as “high, medium or low” priority, along with reason for its ranking.

[29. Referral: Elmwood Commercial District Quota Revisions \(PDF\)](#)**From: Councilmember Wozniak and Worthington**

**Recommendation:** Refer to the Planning Commission (PC) a request to review the Elmwood Commercial District quota system and make recommendations to simplify the quota system to facilitate the opening of new businesses. In particular, the PC should consider

1. Eliminating all retail quota categories,
2. Combining the three food service quotas (carry-out, quick service & full service) into a single food service quota and maintain the requirement of needing to receive a Use Permit in order to exceed the numerical limitation for a food service establishment, and
3. Other solutions which would make it easier to fill vacant storefronts while maintaining a vibrant business district.

**Financial Implications:** See report

Contact: Gordon Wozniak, Councilmember, District 8, 981-7180

**Action:** Approved recommendation. Added a request for evaluation of a percentage adjustment for the quotas based on the increased number of stores in the Elmwood district. Councilmember Worthington added as a co-sponsor.

**High:** This referral, already considered extensively by the Commission, offers an opportunity to reduce quotas in the Elmwood District. Quotas have proven to be less effective than anticipated and difficult to track over time. This referral focuses to a process which could address quotas throughout the City, where the primary focus seems to be on retaining commercial retail spaces, while allowing sufficient spaces for restaurants. Discussion of this referral may lead to a broader recommendation to the

Council on quotas from the Commission. This referral could be revisited as early as March/April 2015.

[20. Amend the Zoning Code to Facilitate Toxic Remediation in Manufacturing Districts \(PDF\)](#)

**From: Councilmembers Moore and Wozniak**

**Recommendation:** Refer to the Planning Commission recommendations for amending the zoning code in order to facilitate toxic remediation in manufacturing districts and to develop a streamlined process that would allow for one application process, rather than separate application processes for the City's Planning Department and the Toxics Division.

**Financial Implications:** Unknown

Contact: Darryl Moore, Councilmember, District 2, 981-7120

**Action:** Approved recommendation.

Medium: This referral was intended to address remediation of a particular site, which was resolved through another method. However, West Berkeley is changing and a more streamline approach to remediation may be value added in light of the need to remediate sites prior to reuse. Staff will follow-up with Toxics to determine the best course of action and bring the issue to the Commission for consideration Fall 2015.

[32. Referral to City Manager: Restrictions on Check Cashing Stores](#)

**From: Councilmembers Arreguin, Anderson, and Moore**

**Recommendation:** Refer to the City Manager and Planning Commission the issue of amending the Zoning Ordinance to restrict new check cashing stores in Berkeley, and request that the City Manager bring back to Council regulations on new check cashing stores.

**Financial Implications:** Staff time

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

**Action:** Approved recommendation.

High: Staff anticipates providing draft Zoning Ordinance language to the Commission in March 2015.

[28. Berkeley Electric Car Incentives](#)

**From: Councilmember Moore**

**Recommendation:** Refer to the City Manager to explore parking policies that would provide incentives for electric car ownership.

**Financial Implications:** Unknown

Contact: Darryl Moore, Councilmember, District 2, 981-7120

**Action:** Approved recommendation.

Low: Thus far, the electric car incentives have come from other sources than the Zoning Ordinance. Should staff identify needed zoning changes, the Commission will be engaged.

[Zoning Amendments to Encourage New Businesses and Promote Economic Development Downtown and Citywide](#)

**From: Councilmembers Arreguin, Capitelli, and Wengraf**

**Recommendation:** Refer to the City Manager and Planning Commission to consider the following zoning amendments and make a recommendation back to City Council: 1. Amend BMC Section 23E.68.030 (Commercial Downtown Mixed Use District, C-DMU) as follows: Full Service Restaurants with ZC 2,000 sq. ft. > 4,000 sq. ft. Increase the threshold for approving Full Service Restaurant uses in the Commercial Downtown Mixed Use District (C-DMU) with a Zoning Certificate from 2,000 square feet to 4,000 square feet. Department Stores with ZC up to 10,000 sq. ft. Increase the threshold for approving Department Store uses in the Commercial Downtown Mixed Use District (C-DMU) from 7,500 sq. ft. with a Zoning Certificate to 10,000 sq. ft. with a Zoning Certificate. 2. Develop a new use category and definition for museums and allow museums in the C-DMU either with an AUP or ZC. 3. Request that the City Manager report on the status of Phase 2 zoning amendments to promote economic development. On December 7, 2010 the Berkeley City Council adopted "Encouraging Economic Development and Increasing City

Revenue from Business Activity" which referred to staff and the Planning Commission zoning amendments regarding changing use limitations, parking requirements and reducing levels of discretion to encourage new businesses to open up.

**Financial Implications:** Staff time

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

**Action:** Approved recommendation

High: Staff recommends that the Commission hear a presentation from Economic Development staff, and recommend zoning changes which would focus on the areas of greatest benefit. Staff would present a list of suggested changes from which to choose. The referral could come to the Commission May/June 2015.

### 3. Extend Commercial Zoning on Fourth Street and Gilman Street (Continued from May 7, 2013)

#### Revised Material

**From: Mayor Bates**

**Recommendation:** Request the Planning Commission consider expanding Commercial West Berkeley (CW) zoning along: 1) Fourth Street to Virginia Street, 2) Gilman Street from Sixth Street to San Pablo Avenue (precise area indicated on map attached to Council report).

**Financial Implications:** Increased tax revenue and employment opportunities.

Contact: Tom Bates, Mayor, 981-7100

**Action:** M/S/C (Maio/Moore) to accept revised material from Mayor Bates.

**Vote:** All Ayes.

**Action:** 11 speakers. M/S/C (Maio/Moore) to approve the Mayor's recommendation as revised to:

1. Request the Planning Commission consider expanding Commercial West Berkeley (CW) zoning along the area indicated on the revised map attached to Council report.
2. Revise the boundary line to include Fitness Evolved and Phoenix Gym within the area for consideration.
3. Refer to the Planning Commission to:
  - a. Study the area south of Gilman Street between Sixth Street and Seventh Street, consult with Berkeley Unified School District as appropriate, and return to Council with a recommendation for possible future action.
  - b. Evaluate alternatives to drawing zoning boundaries through buildings.
  - c. Consider the possibility of overlay zoning to remove the residential component.

**Vote:** Ayes – Maio, Moore, Capitelli, Wengraf, Wozniak, Bates; Noes – Anderson, Arreguin; Abstain – None; Absent – Worthington.

Low: The Commission took action on parcels related to the Whole Foods and Office Depot moves. The other areas identified for rezone in the referral (end of 4<sup>th</sup> Street and Gilman from 6<sup>th</sup> to 9<sup>th</sup>) were not identified as high priority by the Council. Any further action on this referral would require additional study and community participation.

### 63. Referral to Planning Commission: Tobacco Free School Zones

**From: Councilmembers Arreguin and Moore**

**Recommendation:**

1. Refer either proposed zoning ordinance (A) or (B) to the Planning Commission to create Tobacco Free School Zones, conforming two previous referrals prohibiting the sale of tobacco products near schools; and
2. Refer to the City Manager to coincide with any Tobacco Free School Zones ordinance the issue a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors and/or third violation of the ordinance.

**Financial Implications:** Unknown

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

**Action:** 2 speakers. M/S/C (Arreguin/Wozniak) to:

1. Refer proposed zoning ordinance (B) to the Planning Commission to create Tobacco Free School

Zones, conforming two previous referrals prohibiting the sale of tobacco products near schools; and

2. Refer to the City Manager to coincide with any Tobacco Free School Zones ordinance the issue a tougher penalty schedule, including license revocation after a third violation of selling tobacco to minors and/or third violation of the ordinance.
3. Refer to staff the development of regulatory methods through the business license tax and the tobacco retail licensing ordinance.

**Vote:** All Ayes.

**Low:** City staff is determining a path to create the noted regulations. It is not yet clear that Zoning Ordinance changes would be a priority, or whether the regulations are best made part of the Municipal Code instead.

#### [Expansion of Medical Cannabis Cultivation Beyond the Manufacturing \(M\) District Presentation](#)

**From: Medical Cannabis Commission**

**Recommendation:** Request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District.

**Financial Implications:** See report

Contact: Elizabeth Greene, Commission Secretary, 981-7400

**Action:** Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Moore) to request the Planning Commission consider amending the Zoning Ordinance to allow for medical cannabis cultivation in zoning districts beyond the Manufacturing (M) District and give consideration to the MUR district and impacts on residential areas.

**Vote:** All Ayes.

**Low:** Cultivation of marijuana has not been a sought after tenancy in the M District. The Medical Cannabis Commission is interested in expanding the potential sites for cultivation in Berkeley to include more industrial lands. This use may conflict with the West Berkeley Plan priorities to support manufacturing.

#### [Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses](#)

**From: Councilmember Moore**

**Recommendation:** Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.

**Financial Implications:** Staff time

Contact: Darryl Moore, Councilmember, District 2, 981-7120

**Action:** Approved recommendation.

**Medium:** This referral could align with other West Berkeley work, or could be handled separately. It appears that the West Berkeley Plan supports medical uses in the MU-LI District.

#### [Referral to Planning Commission and City Manager Regarding the Feasibility of Requiring the Installation of Water Fountains/Filling Stations for New Commercial Development Projects](#)

**From: Councilmember Capitelli**

**Recommendation:** Refer to the Planning Commission and the City Manager the development of an ordinance requiring all new commercial development projects and remodels above a specified amount to incorporate a publicly available drinking fountain and/or water bottle filling station or locations on the premises where one may be installed without additional cost to the city for piping water to the location. Report back to council within 6 months.

**Financial Implications:** Staff time

Contact: Laurie Capitelli, Councilmember, District 5, 981-7150

**Action:** Approved recommendation.

**Medium:** This item could be addressed through a condition of approval for each project. However, an ordinance requiring such water access would provide better force of law and clarify parameters.

Telegraph Avenue Zoning Changes Referral to Planning Commission (Continued from June 3, 2014)**From:** Councilmember Worthington**Recommendation:** Refer to the Planning Commission potential zoning changes to Telegraph Avenue for Entertainment Establishments, Amusement Arcades, Theatres, and standardizing alcohol beverage services with Downtown standards.**Financial Implications:** Unknown

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**Action:** 1 speaker. M/S/C (Worthington/Maio) to refer to the Planning Commission potential zoning changes to Telegraph Avenue for Entertainment Establishments and Theatres, standardizing alcohol beverage services with Downtown standards, and ask the Planning Commission to create a distinction between video arcades which encompass games that feature electronic war games and violence, from tactile game arcades such as foosball, table soccer, etc. so that the Zoning Adjustments Board is better able to make a distinction in an application, and include the tactile type of arcade in the Telegraph zoning referral.**Vote:** Ayes – Maio, Moore, Anderson, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Arreguin.**Low:** Staff has not seen a proliferation of these type of businesses in Berkeley. However, “activity bars” are becoming more prevalent throughout the Bay Area. These typically include a range of activities from bowling to video arcades under one roof. Creating such a distinction among use types will be complex, and may not have the desired effect of limiting certain types of uses within a particular venue.





Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
**January 21, 2015**

**Time:** The meeting was called to order by Chair Novosel, at 7:03 p.m.

**Location:** North Berkeley Senior Center, 1901 Hearst Ave., Berkeley, CA.

**Commissioners Present:** Deborah Matthews, Tracy Davis, Harry Pollack, Jim Novosel, Stephen Murphy, Benjamin Bartlett, Elizabeth Lam & Gene Poschman.

**Commissioners Absent:** Dan Lindheim

**Staff Present:** Alex Amoroso, Elizabeth Greene, Nicole Montojo.

**ORDER OF AGENDA:** Item 10 (Work Plan Discussion) was moved before Item 9 (Residential Glare).

**PUBLIC COMMENT PERIOD:** 1 speaker

**PLANNING STAFF REPORT:**

Principal Planner Alex Amoroso reported that a public hearing for the Housing Element will be opened at the next Commission meeting on February 4 and closed on February 18. A public meeting on the Adeline Corridor Plan will be held on January 31 at the South Berkeley Senior Center.

**LATE COMMUNICATIONS (received after Agenda deadline):**

- New York Times Article, "Rise in Loans Linked to Cars is Hurting Poor"
- Announcement, Adeline Corridor Public Meeting on January 31, 2015
- 2015-2023 Housing Element Draft for public hearing and discussion at the February 4 and 18 Commission meetings.

**CHAIR REPORT:**

Chair Novosel reported that a new UC Berkeley building will be built on Shattuck Avenue between Berkeley Way and Hearst Avenue. The project raises two land use issues – the size of the ground floor retail spaces and the lack of parking – which the Mayor will be meeting with the UC about. The Chair also noted that he would like to have a future discussion on individual Commissioners' visions for Berkeley.

**COMMITTEE REPORT:** Work Plan ad hoc committee report folded into Item 10 discussion.

30 **APPROVAL OF MINUTES:**

31 Motion/Second/Carried (GP/HP) to approve the Draft Minutes of the Regular Meeting of  
32 December 3, 2014. Ayes: Deborah Matthews, Tracy Davis, Stephen Murphy, Jim Novosel,  
33 Benjamin Bartlett, Harry Pollack, Elizabeth Lam & Gene Poschman.  
34 Noes: None. Abstain: None. Absent: Dan Lindheim. (8-0-0)

35 **CONSENT CALENDAR:** None.

36

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

**10. Discussion:**

**Commission Work Plan**

**Recommendation/Action:**

Discuss and provide feedback to staff on ad hoc committee's  
recommendations for the Commission Work Plan

39 Members of the ad hoc committee shared their recommendation to select economic  
40 development as an area of focus for the work plan.

41 Several Commissioners expressed their agreement with the proposed recommendation. One  
42 Commissioner noted that the Commission should explicitly clarify that the goal of economic  
43 development is to develop people, which includes supporting the types of businesses that  
44 serve a diverse population (including residents of every income level). Another Commissioner  
45 expressed that the economic development focus should be inclusive, with the aim of  
46 benefitting all Berkeley residents.

47 One Commissioner requested that staff regularly report back to the Commission on the status  
48 of issues that the Commission has addressed but have not been resolved, including accessory  
49 dwelling units, mini dorms, and density bonus procedure/policy.

50 Commissioners suggested that medical cannabis cultivation might be considered an economic  
51 development issue.

52 Staff explained that the Commission's recommendations for the work plan will be presented to  
53 the City Council by the Planning Director at an upcoming Council meeting where all city  
54 department work plans and budgets will be discussed.

55 Staff agreed to draft a statement on behalf of the Commission recommending economic  
56 development as an area of focus and explaining the Commission's reasoning for this  
57 recommendation. The Chair agreed to review the letter and share it with no more than four  
58 other Commissioners for additional feedback.

59 Motion/Second/Carried (GP/TD) to follow the procedure outlined by staff for drafting a  
60 recommendation to the City Council, focused on promoting economic development that will be  
61 reviewed by the Chair and a subset of Commissioners.  
62 Noes: None. Abstain: None. Absent: Dan Lindheim. (8-0-0)

63



9. **Discussion:** *Exterior Lighting Glare in Residential Districts*  
**Recommendation/Action:** Recommend draft zoning language regarding residential glare and ideas for an additional referral request to the Council.

Motion to approve the recommendations outlined in the staff report. Amendment/Second/Carried (TD/SM) to approve recommendations 1 and 3 outlined in the staff report to 1) recommend to the City Council an amendment to the Zoning Ordinance designed to reduce exterior lighting glare from residentially zoned properties to other residentially zoned properties and 2) recommend the City Council consider Municipal Code changes to retroactively address properties which produce glare on residential properties. Noes: None. Abstain: None. Absent: Dan Lindheim. (8-0-0)

**The meeting was adjourned at 8:40 p.m.**

**Commissioners in attendance: 8 of 9**

**Members of the public in attendance: 3**

**Public Speakers: 1**

