



Office of the City Manager

C

PUBLIC HEARING

December 4, 2018

(Continued from November 27, 2018)

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

Conduct a public hearing and adopt the first reading of an ordinance amending the Berkeley Municipal Code to streamline and clarify the permitting process for small businesses in commercial districts by:

1. Reducing the amount of parking required for businesses moving into existing commercial spaces;
2. Simplifying food service categories by reducing them from three to one;
3. Reducing permitting time and costs for small businesses that request a change of use in existing commercial spaces;
4. Clarifying the permit process for new business types that may not be specifically defined in the City's zoning rules;
5. Making 'commercial recreation' uses (such as bowling alleys, miniature golf courses or ping pong clubs) easier to permit in commercial districts; and
6. Streamlining the permit process and providing clear performance standards for restaurants that wish to serve beer and wine.

The ordinance would amend Berkeley Municipal Code Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

SUMMARY

On April 25, 2017, the City Council adopted a slate of referrals sponsored by Councilmember Hahn under the umbrella of a "Small Business Support Package" (see Attachment 2). On May 15, 2018, in response to the 2017 referral, Council referred to the Planning Commission a set of six recommendations that would make the permitting process "easier, clearer and more streamlined" for new and expanding small businesses (Attachment 3). The Planning Commission considered the recommendations in the context of current zoning regulations and General Plan objectives and developed a set of proposed Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

The proposed Zoning Ordinance amendments are designed to streamline the permitting process for small businesses in commercial districts. Changes are expected to encourage business activities and therefore may result in a modest increase in business license tax and sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS

Berkeley's Zoning Ordinance has evolved over decades to reflect the changing landscape of property development and land use. Its requirements guide the City's growth while preserving its distinctive character. Berkeley has nine commercial districts, each with a unique set of zoning regulations that reflect neighborhood and community needs and ensure that the purposes of the individual districts are met. One unifying theme in all commercial districts is the value of small, locally owned businesses, which are an integral part of Berkeley's history and culture.

City Council referred to the Planning Commission a set of six recommendations that would shorten and simplify the permitting process for small businesses wanting to locate in Berkeley's commercial districts. City staff researched recommendations in the context of current zoning regulations, business case studies, existing conditions in commercial districts, and purposes of the General Plan. Findings were presented to the Planning Commission for consideration. The Planning Commission analyzed materials, considered public input, and directed staff to develop a set of Zoning Ordinance amendments that benefit smaller businesses and improve the permitting process (Attachment 1).

Planning Commission Recommendations

The Planning Commission considered modifications to Berkeley Municipal Code (BMC) Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98 on June 20, 2018, July 18, 2018 and October 3, 2018. At its October 3, 2018 meeting the Planning Commission held a public hearing and recommended by unanimous vote a set of modifications to the Zoning Ordinance. The ordinance modifications are summarized below. For a detailed discussion of technical edits to the Zoning Ordinance, see the October 3, 2018 Planning Commission Staff Report (Attachment 4). Minutes from this meeting are provided as Attachment 5.

- 1. Remove additional parking requirement associated with a "change of use" when a new business moves into an existing commercial space.** When a new business moves into an existing commercial space, it must provide additional off-street parking if the new use requires more parking than the previous use. This change is triggered solely by use and does not involve a change in square footage and/or modifications to the building exterior. This requirement results in added costs to new businesses in the form of required parking waivers and/or leased parking spaces.

This modification will provide relief to restaurants and medical offices, which have traditionally had higher parking requirements than other retail uses. This modification will make existing commercial spaces more attractive to small businesses.

Commercial districts affected: C-1 General Commercial, C-N Neighborhood Commercial, C-NS North Shattuck, C-SA South Area, C-SO Solano and C-W West Berkeley

2. **Create one “Food Service Establishment” category to characterize restaurant uses.** The existing three food categories, Carry Out Food Store, Quick Service Restaurants and Full Service Restaurant, are an artifact of quotas that once regulated the types and numbers of restaurants allowed in the various commercial districts. The proposed consolidation of restaurant categories into one classification known as “food service establishment” is fairly straightforward, as quotas were largely rescinded in 2015. Where differing regulations concerning food services required resolution, Planning Commission generally recommended that the simpler, less restrictive of the regulations be applied across categories.

To account for the new lower levels of discretion associated with Food Service Establishments, the Planning Commission requested that the Notice of Administrative Decisions for AUPs be mailed to property owners and residents within a 300-foot radius of subject properties instead of the current practice of mailing to the immediately adjacent property owners and tenants.

This modification will provide relief to small businesses by simplifying the Zoning Ordinance and providing applicants with clarity during the permitting process and as market forces lead to changes in food service types. In some cases, this modification will shorten the permitting process, resulting in time and cost savings.

Commercial districts affected: All

3. **Reduce level of discretion associated with “change of use” from a UP(PH) to an AUP for businesses moving into existing commercial spaces.** “Changes of use” for retail businesses wanting to locate in existing commercial spaces can sometimes require a UP(PH). Under existing zoning, the same use may only require an AUP if the commercial space is new. This inconsistency occurs with commercial spaces larger than 3,000 or 5,000 square feet, depending on the district. Requiring a UP(PH) adds time and cost to the permitting process and can make existing commercial spaces difficult to lease.

This modification provides relief to businesses and property owners by reducing permitting costs and permitting time and removes uncertainty by clarifying the Zoning Ordinance. It also makes existing commercial spaces more attractive to businesses, especially those that are larger than 3,000 square feet in size.

Commercial districts affected: C-1, C-E, C-N, C-NS, C-SO and C-SA

- 4. Reduce level of discretion needed to approve a “use deemed compatible” from a UP(PH) to an AUP in Neighborhood Commercial districts.** Business models that combine retail with entertainment, recreational activities, or other complementary uses can be challenging to align with existing use classifications in the Zoning Ordinance. In the Neighborhood Commercial districts, experiential retail business models require Zoning Officer approval of a “use deemed compatible” through the UP(PH) process. The higher level of discretion adds time and cost to the permitting process.

This modification provides relief to businesses with innovative business models by reducing permitting time and costs. It also helps retain existing businesses who want to expand services in order to meet the changing needs of the community.

Commercial districts affected: C-E, C-N, C-NS, C-SA, and C-SO

- 5. Apply C-DMU regulations for Commercial Recreation Centers (CRCs) to Avenue Commercial Districts and require AUPs for CRCs in the Neighborhood Commercial Districts.** In the C-DMU, CRCs are allowed with the following permits:

Size Threshold (square feet)	Permit Required
Under 5,000	ZC
5,000 – 10,000	AUP
Over 10,000	UP(PH)

In most other commercial districts, CRCs require a UP(PH), regardless of the size of the commercial space. CRCs provide benefits to commercial districts and draw customers both regionally and locally. Using a tiered permitting structure will simplify the permitting process for smaller sized CRCs.

The Planning Commission discussed size thresholds at multiple meetings in order to identify appropriate levels of discretion for CRCs. Their final recommendation applies C-DMU thresholds to Avenue Commercial districts and requires AUPs for CRCs of all sizes in Neighborhood Commercial districts. This recommendation was intended to provide an increased level of discretion in Neighborhood Commercial districts. Staff has included a technical amendment to this recommendation, provided as Attachment 6 (Table of CRC Permit Thresholds), to ensure CRCs in Neighborhood Commercial districts require more discretion than CRCs in Avenue Commercial districts.

This modification provides a simpler permitting process to CRCs wanting to establish in Berkeley. The tiered permitting structure benefits smaller businesses by taking commercial space size into consideration. Smaller businesses would require lower levels of discretion, thereby reducing start-up costs and shortening permitting timelines.

Commercial districts affected: All except C-DMU

- 6. Reduce level of discretion for Food Service Establishments serving beer and wine incidental to seated food service from an AUP to a ZC.** Currently, an AUP (with Conditions of Approval) is required when a restaurant desires to serve beer and wine. This local discretion is redundant because alcohol service is regulated through the State's Alcohol Beverage Control (ABC) Department, which already imposes licensing standards and noticing to the public during the application process, and provides opportunity for local input from the Police Department on the conditions imposed on that license. Under this change, the City's permit process would also continue to include standard conditions of approval, currently tied to AUPs, which would instead be added to the Zoning Ordinance as performance standards applicable to all such uses.

This modification will benefit restaurants that provide seated food service. It will reduce permitting costs and reduce redundant city requirements that are already enforced and required by the State.

Commercial districts affected: All

The Planning Commission requested additional public outreach to inform the public about tonight's Council's hearing. In response, the City released a "*Berkeley Considers*" survey that both announced this agenda item and gathered input from community members.

BACKGROUND

On April 25, 2017, the City Council referred to the City Manager the preparation of a package of programs and policies to support the establishment of new, and sustainability of existing, small and locally owned businesses. The strategies that City 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 reducing levels of discretion. In City 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.

During summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley's small businesses and presented its findings at a City Council Worksession on January 16, 2018¹. Over the first quarter of 2018, OED and Planning Department staff collaborated to identify potential modifications to the Zoning Ordinance that would streamline the review process for small businesses. OED Staff also consulted with business district network leaders and numerous individual owners and operators of Berkeley's small businesses for their input. OED and Planning staff presented a set of recommendations to City

¹ See *Economic Development Worksession, Small Business Support*.
https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx

Council in a report on May 15, 2018. City Council referred these recommendations to Planning Commission.

The Planning Commission considered this item at three public meetings between June and October 2018. Discussions primarily focused on current regulations, permit history, and existing conditions in commercial districts with specific attention paid to levels of discretion, permitting thresholds, parking requirements and differences between Avenue Commercial and Neighborhood Commercial districts.

ENVIRONMENTAL SUSTAINABILITY

Small businesses contribute to sustainable transportation and consumer behavior by providing opportunities to shop in commercial districts that are accessible by foot, bicycle and transit. 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

The goal of these Zoning Ordinance amendments is to simplify and streamline 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. Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's fiscal, social and civic wellbeing. These Zoning Ordinance amendments are designed specifically to support small independent operators seeking to invest and activate commercial districts and will provide the community with needed goods and services.

ALTERNATIVE ACTIONS CONSIDERED

Planning Commission considered a range of options with respect to levels of discretion, permitting thresholds, parking requirements and other various changes that benefited small business. The recommendations presented in this report address the goals of City Council's referral.

CONTACT PERSON

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Attachments:

1. Zoning Ordinance Amendment to Modify Berkeley Municipal Code Sections 23E.16.040.A, 23E.28.130, 23E.36.030.A, 23E.36.080.B, 23E.40.030, 23E.40.080.B, 23E.44.030, 23E.44.040.A, 23E.48.030, 23E.48.080.B, 23E.52.030, 23E.52.060.D, 23E.52.080.B, 23E.56.030.A, 23E.56.060.C, 23E.60.030, 23E.60.060.D, 23E.60.080.B, 23E.64.030.A, 23E.64.080.B, 23E.64.090.H, 23E.68.030.A, 23E.68.040, 23E.68.090.C, and 23E.98.050 to modify permitting regulations for businesses in commercial districts.
2. Small Business Support package referral, April 25, 2017

3. Zoning Ordinance modification referral, May 15, 2018
4. Planning Commission Staff Report from October 3, 2018
5. Final Minutes from October 3, 2018 Planning Commission Meeting
6. Table of Proposed CRC Permit Thresholds
7. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENT TO MODIFY BERKELEY MUNICIPAL CODE SECTIONS 23E.16.040.A, 23E.28.130, 23E.36.030.A, 23E.36.080.B, 23E.40.030, 23E.40.080.B, 23E.44.030, 23E.44.040.A, 23E.48.030, 23E.48.080.B, 23E.52.030, 23E.52.060.D, 23E.52.080.B, 23E.56.030.A, 23E.56.060.C, 23E.60.030, 23E.60.060.D, 23E.60.080.B, 23E.64.030.A, 23E.64.080.B, 23E.64.090.H, 23E.68.030.A, 23E.68.040, 23E.68.090.C, AND 23E.98.050 TO MODIFY PERMITTING REGULATIONS FOR BUSINESSES IN COMMERCIAL DISTRICTS.

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

Section 1. That Berkeley Municipal Code Section 23D.16.040.A is amended to read as follows:

23E.16.040 Alcoholic Beverages

A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way unless authorized by a Use Permit, except that:

1. In Commercial Districts, ~~quick-service or full-service~~ food service establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by a Zoning Certificate subject to the following alcoholic beverage service performance standards:

a. Licensing

- 1) The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control; and
- 2) 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 prior to issuance or transfer of a business license at this location.

b. Service

- 1) Beer and wine beverage service shall be "incidental" to the primary food service use, as defined in Berkeley Municipal Code (BMC) Zoning Ordinance Section 23F.04.010 Definitions;
- 2) Beer and wine service incidental to seated food service shall only be allowed at a "bona fide eating place" making "actual and substantial sales of meals" as determined and required by the California Department of Alcohol Beverage Control (ABC);

- 3) The sale of beer and wine for off-site consumption is prohibited;
- 4) Employees shall not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol;
- 5) All beer and wine served to patrons must be served in durable restaurant tableware. No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container;
- 6) 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; and
- 7) 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.

c. Operations

- 1) The food service establishment must operate at least five days a week;
- 2) The service of beer and wine shall be limited to normal meal hours (per ABC) during the restaurant's hours of operation;
- 3) During operating hours, 100% of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
- 4) At no time shall the operator rent the restaurant space to a third-party promoter;
- 5) 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.
 - 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.
- 6) 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; and
- 7) The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

d. Advertising

- 1) 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 code; and
- 2) Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.

e. Training

- 1) Crime Prevention through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service; and
- 2) All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with BMC 9.84.030 (Responsible Beverage Service Training) and 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 90 days of employment at the establishment. Employees who have completed the course within the last twelve (12) months shall be exempt from this requirement.

2. In all other non-residential districts, Food Service Establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by an Administrative Use Permit.

Section 2. That Berkeley Municipal Code Section 23E.28.130 is amended to read as follows:

23E.28.130 Parking Requirements for Change of Use and Expansions of Buildings in C, M, MM, MU and R-SMU Districts

A. No change of use shall be required to meet the off-street parking requirements of either the district or this chapter unless 1) the structure has been expanded to include new floor area or 2) in the M, MM, MU and R-SMU districts, the use is changed to one with a higher numerical parking standard than the district minimum. When the new use has the same or a lower numerical parking standard than the previous use, the new use shall not be required to meet the off-street parking requirements of the district and this chapter.

B. No new floor area shall be created through building expansions, unless it satisfies the parking requirements of the district and this chapter. However, the Zoning Officer may modify the parking requirements for new floor area for expansions of existing buildings with an Administrative Use Permit, subject to the findings in Section [23E.28.140](#) or [23E.28.145](#).

C. In the M, MM, MU and R-SMU districts, fFor a change of use of existing floor area where the new use has a higher numerical parking standard than the existing use as listed in the district provisions, the following applies:

1. The new use must provide the incremental difference between the two numerical parking standards, which must meet all other parking requirements.
2. A higher numerical parking standard may be reduced to the district minimum and other parking requirements may be modified with an Administrative Use Permit, subject to the findings in Section [23E.28.140](#) or [23E.28.145](#). If the new use requires a Use Permit, the Zoning Adjustments Board shall approve, deny or modify the request, subject to the findings in Section [23E.28.140](#) or [23E.28.145](#). If the numerical parking reduction is approved, no additional off-street parking is required.

Section 3. That Berkeley Municipal Code Section 23E.36.030.A is amended to read as follows:

23E.36.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	AUP**	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Offices		
Financial Services, Retail (Banks)	AUP**	

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC*	Subject to parking requirements; see Table 23E.36.080
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Table 23E.36.080
Other Professionals, and Government, Institutions, Utilities	ZC*	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center <u>Under 5,000 s.f.</u> <u>Between 5,000--10,000 s.f.</u> <u>Over 10,000 s.f.</u>	UP(PH) <u>ZC</u> <u>AUP</u>	<u>Outdoor use requires UP(PH)</u>

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
	<u>UP(PH)</u>	
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments		
Carry-Out Food Service Stores	AUP**	Food Service Establishments that exclusively sell food for offsite consumption are Prohibited <u>prohibited</u> at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council
Under 1,500 s.f.	ZC	
<u>Over 1,500 s.f.</u>	<u>AUP</u>	
Quick Service Restaurants	AUP**	
Under 1,500 s.f.	ZC	Subject to parking requirements; see Section 23E.36.080
Full Service Restaurants	AUP**	
Under 1,500 s.f.	ZC	Subject to parking requirements; see Section 23E.36.080
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	
Gyms and Health Clubs	AUP**	
Under 7,500 s.f.	ZC*	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section 23E.36.080

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts. Prohibited within the University Avenue Strategic Plan Overlay
Automobile Repair and Service, including Parts Service	AUP**	Prohibited within the University Avenue Strategic Plan Overlay
Automobile Sales and Rentals	AUP**	Prohibited within the University Avenue Strategic Plan Overlay
Automobile Washes, Mechanical or Self-Service	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores, including Sales and/or Service	UP(PH)	Prohibited within University Avenue Strategic Plan Overlay
Recreational Vehicle and Trailers Sales and Rental, including Boats	AUP**	Prohibited within University Avenue Strategic Plan Overlay
Tire Sales/Service Stores	UP(PH)	Prohibited within University Avenue Strategic Plan Overlay
Parking, Outdoor and Exterior Service Window Uses		
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Drive-in Uses	UP(PH)	Providing service to customers in their cars. See definition in Subtitle F. Prohibited within University Avenue Strategic Plan Overlay
Activities or Storage outside of a building		
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Parking Lots		
Five or fewer Off-street Parking Spaces	ZC	
More than five Off-street Parking Spaces	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Sections 23E.36.070.D and 23E.36.080.E . Within the University Avenue Strategic Plan Overlay areas, the following uses are not allowed on the ground floor of a Mixed Use building unless a Use Permit is issued pursuant to Sections 23E.36.090.A and B: residential units and uses (other than parking) which serve the residential uses, e.g., leasing and management of the building
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with	AUP	Subject to making applicable findings in Section 23C.24.070

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
requirements under Section 23C.24.050		
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E . Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted within University Avenue Overlay Mixed Use areas
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.36.070.E
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Parks and Playgrounds	ZC	

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10 .

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP**	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate	*Change of Use of floor area between-over 3,000 and 5,000 -sq. ft. shall require an AUP; over 5,000 sq. ft. shall require a UP(PH)	
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required	**Change of Use of floor area over 5,000 sq. ft. shall require a UP(PH)	
Prohibited – Use not permitted		

Section 4. That Berkeley Municipal Code Section 23E.36.080.B is amended to read as follows:

23E.36.080 Parking -- Number of Spaces

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.36.080](#) shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use~~.

Table 23E.36.080	
Parking Required	
Use	Number of spaces
Hospitals	One per each four beds plus one per each three employees
Hotels	One per each three guest/sleeping rooms or suites plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room plus one space for owner or manager*
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080
*Required parking shall be on same lot as building it serves.	

Section 5. That Berkeley Municipal Code Section 23E.40.030 is amended to read as follows:

23E.40.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	AUP Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Non-Chartered Financial Institutions	Prohibited	
Medical Practitioners including Holistic Health and Mental Health Practitioners	AUP**	Subject to additional parking requirements under Section 23E.40.080.B
Other Professionals and Government, Institutions, Utilities	AUP**	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service
Amusement Device Arcades	Prohibited	
Commercial Recreation Center <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	<u>AUP</u> UP(PH)	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments	UP(PH)	Includes Nightclubs
Food Service Establishments Carry-Out Food Service Stores Under 1,000 s.f. <u>Over 1,000 s.f.</u>	<u>AUP**</u> ZC <u>AUP</u>	<u>Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.</u>
Quick-Service Restaurants Under 1,000 s.f. Full-Service Restaurants	<u>AUP**</u> ZC <u>AUP**</u>	Subject to additional parking requirements under Section 23E.40.080.B

Table 23E.40.030

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Under 1,000 s.f.	ZC	
Group Class Instruction for Business, Vocational or Other Purposes	AUP**	
Gyms and Health Clubs	ZC*	
Hotels, Tourist	UP(PH)	Includes Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Includes Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service	Prohibited	Includes Parts Service
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores	Prohibited	Includes Sales and/or Service
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Includes Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Activities or Storage Outside of a building		
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines	UP(PH)	Exterior and when part of a Retail Financial Service
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Subtitle F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section 23E.40.070.D
Uses Incidental to a Permitted Use		

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	AUP	
Live Entertainment		
Unamplified	ZC	
Amplified	UP(PH)	
Manufacturing Uses	UP(PH)	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agricultures	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.40.070.E
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.40.080.B
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities	AUP	Subject to the requirements of Section 23C.17.100
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District		
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate	*Change of Use of floor area <u>over</u> 2,000 and 3,000 sq. ft. shall require an AUP; over 3,000 sq. ft. shall require a UP(PH)	
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required	**Change of Use of floor area over 3,000 sq. ft. shall require a UP(PH)	
Prohibited – Use not permitted		

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

B.C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table [23E.40.030](#).

Section 6. That Berkeley Municipal Code Section 23E.40.080.B is amended to read as follows:

23E.40.080 Parking -- Number of Spaces

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.40.080](#) shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use~~.

Table 23E.40.080	
Parking Required	
Use	Number of spaces
Hospitals	One per each four beds plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

Section 7. That Berkeley Municipal Code Section 23E.44.030 is amended to read as follows:

23E.44.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Personal and Household Services		
All Personal/Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage).
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Video Tape/Disk Rental Stores	AUP**	
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	Prohibited	Including Holistic Health and Mental Health Practitioners
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	AUP**	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service	UP(PH)	Service of alcoholic beverages allowed only as incidental to food service in Food Service Establishments
Alcoholic Beverage Service of beer and wine incidental to seated food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Amusement Device Arcades	Prohibited	
Commercial Recreation Center <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	AUP UP(PH)	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	AUP **	
Entertainment Establishments, including Nightclubs	Prohibited	
Food Service Establishments Carry-Out Food Service Stores Quick Service Restaurants Full Service Restaurants	AUP ** AUP ** AUP **	<u>Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.</u>
Group Class Instruction for Business, Vocational or Other Purposes	AUP **	
Gyms and Health Clubs	AUP **	

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Activities or Storage Outside of a building		
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	UP(PH)	
Drive-in Uses	Prohibited	Providing service to customers in their cars. See definition in Subtitle F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Section 23E.44.070.E

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	Treated as Food Service Establishment and subject to numerical limitations in Table 23E.44.040 . Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store.
Live Entertainment		
Unamplified	ZC	
Amplified	Prohibited	
Manufacturing Uses	UP(PH)	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	UP(PH)	
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with	AUP	Subject to making applicable findings in Section 23C.24.070

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
requirements under Section 23C.24.050		
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.44.070.F
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements under Section 23E.44.080
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23E.44.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter		See Chapter 23C.10 .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	

Table 23E.44.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Legend:		
ZC – Zoning Certificate		*Change of Use of floor area between-over 2,000 and 3,000 sq. ft. shall require an AUP; over 3,000 sq. ft. shall require an UP(PH)
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required		**Change of Use of floor area over 3,000 sq. ft. shall require a UP(PH)
Prohibited – Use not permitted		

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

C. The initial establishment, or change, of use of floor area of an existing non-residential building, or portion of building, shall be subject to the following permit requirements as listed in the legend of Table [23E.44.030](#).

Section 8. That Berkeley Municipal Code Section 23E.44.040.A is amended to read as follows:

23E.44.040 Special Provisions -- Numerical Limitations

A. Uses subject to numerical limitations as set forth in Table [23E.44.040](#) shall also be subject to the requirements of Section [23E.44.030](#). No such limitation may be exceeded unless the Board issues an Administrative Use Permit and makes the findings under Section [23E.44.090](#).C.

Table 23E.44.040			
Numerical Limitations			
Use	Number Limit	Size (sq. ft.)	Type of Permit
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500	Zoning Certificate
Bookstores, Periodical Stands	No limit	2,000	Zoning Certificate
Food Service Establishments:	25		
Carry-Out Food Service		1,000	Subject to classifications listed in Table <u>23E.44.030</u>
Quick Service Restaurants		1,000	
Full Service Restaurants		None	
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000	Zoning Certificate

Section 9. That Berkeley Municipal Code Section 23E.48.030 is amended to read as follows:

23E.48.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics, including Pet Hospitals	UP(PH)	
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners	UP(PH)	Including Holistic Health and Mental Health Practitioners. Subject to parking requirements; see Table 23E.48.080
Non-Chartered Financial Institutions	Prohibited	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Other Professionals and Government, Institutions, Utilities	AUP**	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service (no Bars, Cocktail Lounges, or Taverns allowed)	UP(PH)	Service of distilled alcoholic beverages may be approved only for Full Service Restaurants
Amusement Device Arcades	Prohibited	
Commercial Recreation Center <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	<u>AUP</u> UP(PH)	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	AUP**	
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments Carry-Out Food Service Stores	AUP**	<u>Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.</u>

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Under 1,000 s.f. <u>Over 1,000 s.f.</u> Quick Service Restaurants Under 1,000 s.f. Full Service Restaurants Under 1,000 s.f.	ZC <u>AUP</u> AUP** ZC AUP** ZC	Subject to parking requirements; see Section 23E.48.080
Group Class Instruction for Business, Vocational or Other Purposes	AUP**	When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area; not to exceed 2,500 sq. ft.
Gyms and Health Clubs	AUP**	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	Prohibited	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	
Automobile Sales and Rentals	Prohibited	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores, including Sales and/or Service	Prohibited	
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building		
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Providing service to customers in their cars. See definition in Sub- title F
Parking Lots	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to the standards under Sections 23E.48.070.E and 23E.48.080.D
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	
Live Entertainment		
Unamplified	ZC	
Amplified	UP(PH)	
Manufacturing Uses	Prohibited	
Storage of Goods (over 25% of gross floor area)	AUP	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Wholesale Activities	Prohibited	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070 .F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.48.070 .F
Hospitals	Prohibited	

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.48.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Circus or Carnival	UP(PH)	
Commercial Excavations	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10 .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site	AUP	Subject to the requirements and findings of Section 23C.17.100

Table 23E.48.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Is Not Adjacent to a Residential District		
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate	* Change of Use of floor area between over 2,000 and 3,000 sq. ft. shall require an AUP; over 3,000 sq. ft. shall require a UP(PH)	
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required	** Change of Use of floor area over 3,000 sq. ft. shall require a UP(PH)	
Prohibited – Use not permitted		

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

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the Permit requirements as listed in the legend of Table [23E.48.030](#).

Section 10. That Berkeley Municipal Code Section 23E.48.080.B is amended to read as follows:

23E.48.080 Parking -- Number of Spaces

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.48.080](#) shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use~~.

Table 23E.48.080	
Parking Required	
Use	Number of spaces
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

Section 11. That Berkeley Municipal Code Section 23E.52.030 is amended to read as follows:

23E.52.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	AUP**	

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	ZC*	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC*	Subject to parking requirements; see Table 23E.52.080
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Section 23E.16.080
Other Professionals and Government, Institutions, Utilities	ZC*	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service. <u>No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue, except as incidental to meals in Full Service Restaurants only seated food service; see Section 23D.52.060 D1</u>

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
		No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue, except as incidental to meals in Full Service Restaurants only
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center Under 3,000 s.f. Over 3,000 s.f.	UP(PH) AUP UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Carry Out Food Service Stores Under 1,000 s.f. Over 1,000 s.f.	 AUP** ZC AUP	Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Quick Service Restaurants Under 1,000 s.f.	AUP** ZC	Subject to parking requirements; see Table 23E.52.080
Full Service Restaurants Under 1,000 s.f.	AUP** ZC	-
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Gyms and Health Clubs	ZC*	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile and Motorcycle Repair and Service, including Parts Service	Prohibited	
Automobile and Motorcycle Sales Exclusively indoor operations With outdoor activities	ZC* UP(PH)	Subject to additional requirements, see 23E.52.070.F . Uses with outdoor activities limited to the Dealership Overlay Area by Section 23E.52.060.E .
Automobile and Motorcycle Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building		

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines	AUP	Exterior and when part of a Retail Financial Service
Drive-in Uses	UP(PH)	Which provide service to customers in their cars; see definition in Sub-title 23F
Parking Lots, Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units	UP(PH)	Subject to the standards of Chapter 23E.20
Mixed Use Developments		
(Residential/Commercial) of less than 5,000 sq. ft.	ZC	Subject to the standards of Section 23E.52.070 .D.1 through 6
(Residential/Commercial) of 5,000 sq. or more	UP(PH)	Subject to the standards of Section 23E.52.070 .D.7
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.52.070.E
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more people	AUP	
New construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter		See Chapter 23C.10 .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to	AUP	Subject to the requirements and findings of Section 23C.17.100

Table 23E.52.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture Low-Impact Urban Agriculture (LIUA) High-Impact Urban Agriculture (HIUA)	ZC AUP	23C.26
Legend:		
ZC – Zoning Certificate	*Change of Use of floor area between over 3,000 and 5,000 sq. ft. shall require an AUP; over 5,000 sq. ft. shall require a UP(PH)	
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required	**Change of Use of floor area over 5,000 sq. ft. shall require a UP(PH)	
Prohibited – Use not permitted		

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

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table [23E.52.030](#).

Section 12. That Berkeley Municipal Code Section 23E.52.060.D is amended to read as follows:

23E.52.060 Use Limitations*

D. Adult-oriented Businesses are prohibited. Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters [23E.16](#) and [23E.20](#) and the following requirement:

1. The sale and service of distilled alcoholic beverages (hard liquor) is prohibited along Adeline Street, south of Ashby Avenue, except that such service may be allowed subject to obtaining a Use Permit for ~~full-seated food service~~ and onsite consumption restaurants when such service is incidental to meals.

Section 13. That Berkeley Municipal Code Section 23E.52.080.B is amended to read as follows:

23E.52.080 Parking -- Number of Spaces

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.52.080](#) shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use~~.

Table 23E.52.080	
Parking Required	
Use	Number of spaces
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-4 Standards, Section 23D.40.080
Automobile and Motorcycle Sales	One per 1,000 sq. ft. of floor area

Section 14. That Berkeley Municipal Code Section 23E.56.030.A is amended to read as follows:

23E.56.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)), or is Prohibited. See also Section [23E.56.070](#).C for restrictions on usage of upper floors.

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F , except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F , except those otherwise listed (does not include Massage).
Laundromats	AUP*	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	AUP*	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070 . When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
Medical Practitioners, including Holistic Health and Mental Health Practitioners	AUP*	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C . When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.
Non-Chartered Financial Institutions	UP(PH)	Subject to additional requirements; see Section 23E.16.080
Other Professionals and Government, Institutions, Utilities	AUP*	Subject to restrictions above the ground floor except on Bancroft Way; see Section 23E.56.070.C . When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	For on-site consumption only. Service of distilled alcoholic beverages may be approved for <u>seated food service. full-service restaurants only</u>
Amusement Device Arcades	Prohibited	
Commercial Recreation Center <u>Under 5,000 s.f.</u> <u>Between 5,000--10,000 s.f.</u> <u>Over 10,000 s.f.</u>	AUP* <u>ZC</u> AUP <u>UP(PH)</u>	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Carry-Out Food Service Stores Under 1,500 s.f. <u>Over 1,500 s.f.</u> Quick-Service Restaurants Under 1,500 s.f. Full-Service Restaurants	AUP* ZC <u>AUP*</u> UP(PH) ZC <u>AUP*</u>	

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Under 1,500 s.f.	ZC	
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Prohibited on ground floor adjacent to street frontage
Gyms and Health Clubs	ZC	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC	Excluding service of auto parts
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Automobile/Motorcycle Parts Service	UP(PH)	
Gasoline/Automobile Fuel Stations	Prohibited	Except when located in a parking structure
Motorcycle Stores	Prohibited	Including Sales and/or Service

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building		
Not abutting R- District	AUP*	
When abutting R- District	UP(PH)	
Automatic Teller Machines	AUP*	Exterior and when part of a Retail Financial Service
Drive-in Uses	Prohibited	Which provide service to customers in their cars. See definition in Sub-title 23F
Parking Lots	Prohibited	
Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP*	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.56.070.E
Uses Incidental to a Permitted Use		

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Amusement Devices (up to 3)	AUP*	
Food or Beverage for Immediate Consumption	AUP*	
Live Entertainment Unamplified	AUP* ZC	
Manufacturing Uses	AUP*	
Storage of Goods (over 25% of gross floor area)	AUP*	
Wholesale Activities	AUP*	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.56.070.E
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Cemeteries, Crematories, Mausoleums	Prohibited	
Circus or Carnival	UP(PH)	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10 .
Kennels or Pet Boarding	Prohibited	
Laboratories	Prohibited	Except photographic processing laboratories
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Warehouses or Storage, including Mini-storage Warehouses	Prohibited	
Wireless Telecommunications Facilities		

Table 23E.56.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate AUP – Administrative Use Permit * UP(PH) – Use Permit, public hearing required Prohibited – Use not permitted	* For the purposes of the C-T zoning district, uses established by AUP require public notification of a decision within a 300-foot radius of the subject property.	

Section 15. That Berkeley Municipal Code Section 23E.56.060.C is amended to read as follows:

23E.56.060 Use Limitations*

C. On-premises service and consumption of distilled alcoholic beverages shall be permitted ~~with in full service restaurants seated food service~~ only.

Section 16. That Berkeley Municipal Code Section 23E.60.030 is amended to read as follows:

23E.60.030 Uses Permitted

A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC*	As defined in Sub-title F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	UP(PH)	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC*	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Medical Practitioners, including Holistic Health & Mental Health Practitioners	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Non-Chartered Financial Institutions	Prohibited	
Other Professionals, and Government, Institutions, Utilities	AUP**	When located on the ground floor adjacent to a street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service (no Bars, Cocktail Lounges, & Taverns)	UP(PH)	Service of distilled alcoholic beverages may be approved for full service restaurants only <u>Food Service Establishments providing seated food service; see Section 23E.60.060 D1</u>
Amusement Device Arcades	Prohibited	
Commercial Recreation Center <u>Under 3,000 s.f.</u> <u>Over 3,000 s.f.</u>	UP(PH) <u>AUP</u> <u>UP(PH)</u>	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	AUP**	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments Carry Out Food Service Stores Under 1,000 s.f. <u>Over 1,000 s.f.</u> Quick Service Restaurants Under 1,000 s.f.	 AUP** ZC <u>AUP</u> AUP** ZC	<u>Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject project.</u> <u>Subject to parking requirements; see Section 23E.60.080</u>

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Full-Service Restaurants	AUP**	-
Under 1,000 s.f.	ZC	-
Group Class Instruction for Business, Vocational or Other Purposes	AUP**	
Gyms and Health Clubs	AUP**	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels, subject to parking requirements; see Section 23E.60.080
Motels, Tourist	Prohibited	
Theaters	Prohibited	Including Motion Pictures and Stage Performance
Automobile and Other Vehicle Oriented Uses		
Automobile Parts Stores	ZC*	Excluding service of auto parts
Automobile Repair and Service, including Parts Service	Prohibited	
Automobile Sales and Rentals	Prohibited	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	UP(PH)	
Motorcycle Stores (sales or service)	Prohibited	

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Recreational Vehicle and Trailers Sales and Rental, including Boats	Prohibited	
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building		
Not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Automatic Teller Machines (exterior and when part of a Retail Financial Service)	AUP	Limited to 2 machines and only when off-street parking is provided
Drive-in Uses	UP(PH)	Which provide service to customers in their cars. See definition in Sub-title 23F
Parking Lots		
5 or fewer Off-street Parking Spaces	AUP	
More than 5 Off-street Parking Spaces	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (Residential/Commercial)	UP(PH)	Subject to Section 23E.60.070.E
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	UP(PH)	
Food or Beverage for Immediate Consumption	UP(PH)	
Live Entertainment		Also subject to the limitations under Section 23E.60.060.D.2
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Child Care Centers	UP(PH)	
Clubs, Lodges	Prohibited	
Community Centers	UP(PH)	
Dwelling Units, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
Group Living Accommodations, subject to R-3 Standards	UP(PH)	Standards may be modified under Section 23E.60.070.F
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.60.080

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.60.080
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	
Miscellaneous Uses		
Automatic Teller Machines	Prohibited	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter		See Chapter 23C.10 .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	Prohibited	Except medical office laboratories
Mortuaries	Prohibited	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC – Zoning Certificate	*Change of Use of floor area between over 2,000 and 3,000 -sq. ft. shall require an AUP; over 3,000 sq. ft. shall require a UP(PH)	
AUP – Administrative Use Permit		
UP(PH) – Use Permit, public hearing required	**Change of Use of floor area over 3,000 sq. ft. shall require a UP(PH)	
Prohibited – Use not permitted		

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

C. The initial establishment or change of use of floor area of an existing non-residential building, or portion of building, shall be subject to the permit requirements as listed in the legend of Table [23E.60.030](#).

Section 17. That Berkeley Municipal Code Section 23E.60.060.D is amended to read as follows:

23E.60.060 Use Limitations*

D. Adult-oriented Businesses are not permitted, as the entire District is within the location limitations of Section [23E.16.030](#). Amusement Arcades and Non-Chartered Financial Institutions are not permitted in this District. Live/Work Uses shall be subject to the requirements of Chapter [23E.20](#), in addition to the requirements of this District. Alcoholic Beverage Service uses, except as provided for below, are not permitted:

1. No on-premises service and consumption of distilled alcoholic beverages shall be allowed except ~~in full service restaurants, with seated food service~~ and subject to obtaining a Use Permit.
2. Food Service Establishments shall have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.

Section 18. That Berkeley Municipal Code Section 23E.60.080.B is amended to read as follows:

23E.60.080 Parking -- Number of Spaces

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.60.080](#) shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use~~.

Table 23E.60.080	
Parking Required	
Use	Number of spaces
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

Section 19. That Berkeley Municipal Code Section 23E.64.030.A is amended to read as follows:

23E.64.030 Uses Permitted

A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.

Table 23E.64.030				
Use and Required Permits				
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Retail Sales				
Retail uses as defined in Sub-title 23F, except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH)**	**Except when part of a combination commercial/residential use; see Mixed Use Development heading
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)			Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)			Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)			
Smoke Shops	UP(PH)			Prohibited if within 1,400 feet of a school or public park
Personal and Household Services				
	Under 3,000	3,000-5,000	5,000 or more	
All Personal/Household Services, except as specified below	ZC	AUP	UP(PH)	As defined in Sub-title 23F, unless otherwise specified
Laundromats and Cleaners	AUP		UP(PH)	Dry Cleaning plants prohibited

Table 23E.64.030				
Use and Required Permits				
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Veterinary Clinics	UP(PH)			
Office Uses				
Office uses other than banks prohibited on ground floors in designated nodes.				
	Under 3,000	3,000-5,000	5,000 or more	
All Office Uses, except those specified below	ZC	AUP	UP(PH)	
Business Support Services	ZC	AUP	UP(PH)	See definition in Sub-title F for permitted uses
Financial Services, Retail (Banks)	AUP			
Medical Practitioners, including Holistic Health and Mental Health Practitioners	ZC	AUP	UP(PH)	Subject to parking requirements under Section 23E.64.080.F
Non-Chartered Financial Institutions	UP(PH)			Subject to additional requirements; see Section 23E.16.080
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses				
Adult-oriented Businesses	UP(PH)			Prohibited on lots with frontage on San Pablo Ave. Other locations subject to distance requirements of Section 23E.16.030
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service <u>at</u>	<u>AUP</u> <u>ZC</u>			For on-site consumption only

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
quick and full service restaurants		
Alcoholic Beverage Service	UP(PH)	Including Bars, Cocktail Lounges and Taverns. Also includes service of distilled spirits incidental to food service
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center <u>Under 5,000 s.f.</u> <u>Between 5,000--10,000 s.f.</u> <u>Over 10,000 s.f.</u>	<u>ZC</u> <u>AUP</u> UP(PH)	<u>Outdoor use requires UP(PH)</u>
Dance, Exercise, Martial Arts and Music Studios	ZC	UP(PH) if 7,500 or more sq. ft.
Entertainment Establishments	UP(PH)	Includes Nightclubs
Food Service Establishments Carry-Out Food Service Stores Under 1,500 s.f. <u>Over 1,500 s.f.</u>	 AUP ZC <u>AUP</u>	Food service drive-through prohibited on San Pablo. See Section 23E.64.040 .C and E. Also see Section 23E.64.090.H for special findings

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Quick Service Restaurants Under 1,500 s.f.	AUP ZC	Food service drive-through prohibited on San Pablo. See Section 23E.64.040.C and E . Also see Section 23E.64.090.H for special findings
Full Service Restaurants Under 1,500 s.f. 1,501-2,500 s.f. Over 2,501 s.f.	- ZC AUP UP(PH)	Subject to additional parking requirements; see Section 23E.64.080.F
Group Class Instruction for Business, Vocational, or Other Purposes	ZC	
Gyms and Health Clubs	ZC	UP(PH) if 7,500 or more sq. ft.
Hotels, Tourist, including Inns, Bed and Breakfasts, and Hostels	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Automobile and Other Vehicle Oriented Uses		
On lots with frontage on San Pablo Avenue, changes of use from uses other than Automobile and Other Vehicle Oriented Uses prohibited, as provided in Section 23E.64.060.E . Auto parts sales is a retail use.		

Table 23E.64.030			
Use and Required Permits			
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)		Special Requirements (if any)
	Less than 5,000 sq. ft. floor area and less than 10,000 sq. ft. of lot area	Either 5,000 or more sq. ft. of floor area; or 10,000 or more sq. ft. of lot area	
Automobile and Truck Rentals	AUP	UP(PH)	Prohibited in designated nodes
Automobile Repair and Service, including Parts Service	AUP	UP(PH)	
Automobile Restoration, Antique and Classic Cars	AUP	UP(PH)	
Automobile Sales	AUP	UP(PH)	
Automobile Used Car Establishments	UP(PH)		Prohibited in designated nodes unless principally in buildings
Automobile Washes, Mechanical or Self-Service	UP(PH)		Prohibited in designated nodes
Automobile Wrecking Establishments	Prohibited		
Gasoline/Automobile Fuel Stations	UP(PH)		

Table 23E.64.030			
Use and Required Permits			
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)		Special Requirements (if any)
Motorcycle Stores, including Sales, Parts and/or Service	UP(PH)		
Recreational Vehicle and Trailers Sales and Rental, including Boats	AUP	UP(PH)	
Tire Sales/Service Stores	UP(PH)		Prohibited in designated nodes; see Section 23E.64.050.C
Parking, Outdoor and Exterior Service Window Uses			
Activities or Storage outside of a building When not abutting R-District and using 10,000 sq. ft. or less of lot area When abutting R-District or 10,000 sq. ft. of lot area or more	AUP UP(PH)		Activities must be permitted or incidental to permitted use in the District
Automatic Teller Machines	AUP		Exterior and when part of a Retail Financial Service
Drive-in uses	Prohibited		Providing service to customers in their cars
Open Air Markets	UP(PH)		Prohibited in designated nodes. See Section 23E.64.050.C
Parking Lots 10 or fewer spaces	AUP		

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
11 or more spaces	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential and other Mixed Uses		
The area within a Live/Work Unit, including both residential and non-residential space, shall be not less than 800 sq. ft. A UP(PH) is required in some cases; see Chapter 23E.20 .		
Live/Work Units		
9 or fewer	AUP	If not changed from a dwelling unit
10 or more	UP(PH)	And/or if changed from a dwelling unit
Mixed Use Developments		
Incorporating residential and retail; where the retail space comprises at least 15% but not more than 33% of the floor area	AUP if less than 20,000 sq. ft. floor area UP(PH) if 20,000 sq. ft. or more floor area	
Other Mixed Use Developments	ZC if less than 5,000 sq. ft.	AUP if 5,000-9,000 sq. ft.

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
incorporating residential use and other permitted uses		
Uses Incidental to a Permitted Use		
Amusement Devices (up to 3)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	ZC UP(PH)	See performance standards in Section 23E.64.070.E
Storage of Goods (over 25% of gross floor area)	AUP	
Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Additions, Major Residential	AUP	See definition in Sub-title 23F . Subject to required finding under Section 23E.64.090.G

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes of 8 or fewer children	ZC	
Large Family Day Care Homes of 9 to 14 children	AUP	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to Development Standards under Section 23E.64.070
Group Living Accommodations	UP(PH)	Subject to Development Standards under Section 23E.64.070
Home Occupations		
Low Impact	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Moderate Impact	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.070.C
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		
Six or fewer persons	ZC	Changes of use from an existing dwelling unit
Seven or more persons	AUP	
New Construction	UP(PH)	

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Miscellaneous Uses		
Automatic Teller Machines	AUP	When not part of a Retail Financial Service
Cafeteria, Employee or Residential	AUP	
Cemeteries and Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	Prohibited in designated nodes. See Section 23E.64.050.C
Commercial Excavation	Prohibited	Including earth, gravel, minerals or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter		See Chapter 23C.10 .

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	UP(PH)	Prohibited on ground floor in designated node
Laboratories, Commercial Physical or Biological	Prohibited	See Section 23E.64.030.C
Laboratories, Testing (including Cannabis Testing)	AUP if less than 10,000 sq. ft. UP(PH) if more than 10,000 sq. ft.	
Mortuaries and Crematories	UP(PH)	
Public Utility Substations, Buildings, Tanks	UP(PH)	Prohibited in designated node. See Section 23E.64.050.C
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	Prohibited on ground floor in designated node. See Section 23E.64.050.C
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	ZUP	
Light Manufacturing and Wholesale Trade Uses		
Manufacturing uses prohibited on ground floors in designated nodes. See Section 23E.64.050.C		
Light Manufacturing and Wholesale Trade Uses (including Cannabis Distributors)		
5,000 or less sq. ft.	AUP	
5,000 sq. ft. or more	UP(PH)	
All Other Manufacturing Uses	UP(PH)	
Warehouses or Storage (including Mini-storage Warehouses)	Prohibited	
Legend:		
ZC – Zoning Certificate	UP(PH) – Use Permit, public hearing required	

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
AUP – Administrative Use Permit	Prohibited – Use not permitted	

Section 20. That Berkeley Municipal Code Section 23E.64.080.B is amended to read as follows:

23E.64.080 Off-Street Parking and Loading Requirements

B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table [23E.64.080](#) shall meet the requirements listed, for newly constructed floor area ~~or changes of use~~, except as otherwise modified in this subsection, and Subsections F through I below.

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses and Senior Congregate Housing	One per each five residents; plus one for manager
Dwelling Units	One per unit, except as modified by provisions for shared parking in Section 23E.64.080.G ; 75% less for Seniors (see below)
Hospitals	One per each four beds; plus one per each three employees
Hotels	One per each three guest/sleeping rooms or suites; plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible

Table 23E.64.080	
Parking Required*	
Use	Number of spaces
Live/Work Units	One per unit, provided, however, that if any workers and/or clients are permitted in any work area, there shall be one additional parking space for the first 1,000 sq. ft. of work area, one further parking space for each additional 750 sq. ft. and subject to any additional requirements for parking pursuant to Section 23E.20.040.B
Manufacturing uses (assembly, production, storage and testing space only)	One per 1,000 sq. ft. of floor area
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Motels	One per each guest/sleeping room; plus one space for owner or manager**
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Wholesale Trade	One per 1,000 sq. ft. of floor area
*See Subsection J for substitutions of up to 10% with bicycle/motorcycle parking	
**Required parking shall be on the same lot as the building it serves	

Section 21. That Berkeley Municipal Code Section 23E.64.090.H is amended to read as follows:

23E.64.090 Findings

~~H. Before approving a Use Permit for a Carry Out Food Store or Quick Service Restaurant on a lot with frontage on San Pablo Avenue, the Zoning Adjustments Board shall make the findings contained in Section [23B.32.040](#) as well as the findings that:~~

- ~~1. The project does not conflict with the goals and policies of the C-W District;~~
- ~~and~~

- ~~2.—The location, size, appearance and signage of the proposed use will not adversely affect the San Pablo Avenue Corridor; and~~
- ~~3.—The project supports pedestrian-oriented development; and~~
- ~~4.—The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to: increased traffic, litter, and noise.~~
- ~~5.—For projects which include construction of new buildings, the board shall also make the findings that the project design:

 - ~~a.—Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets; and~~
 - ~~b.—Provides pedestrian scale and siting; and~~
 - ~~c.—Incorporates continuity in street facades.~~~~

Section 22. That Berkeley Municipal Code Section 23E.68.030.A is amended to read as follows:

23E.68.030 Uses Permitted

A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section [23E.68.040](#).

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F , except otherwise listed

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 10,000 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F , except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section 23E.68.040
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Subject to additional requirements; see Section 23E.68.060.E

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Medical Practitioners	ZC	Including Holistic Health and Mental Health Practitioners
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Non-Chartered Financial Institutions	Prohibited	
Other Professionals and Government, Institutions, Utilities	ZC	Subject to additional requirements; see Section 23E.68.060.E
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-Oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030 Prohibited on Public Serving Frontages
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service.
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center		
Under 5,000 s.f.	ZC	Outdoor use requires UP(PH)
Between 5,000--10,000 s.f.	AUP	
Over 10,000 s.f.	UP(PH)	

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments: Carry Out Food Service Stores Under 23 ,000 s.f. Over 3,000 s.f. Within the A.D.O.	AUP ZC AUP AUP	Within the Arts District Overlay, see Section 23E.68.040 See Alcoholic Beverage Service above.
Quick Service Restaurants Under 2,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Full Service Restaurants Under 4,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Subject to additional requirements; see Section 23E.68.060.E
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC	Subject to additional requirements; see Section 23E.68.060.E
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	UP(PH)	
Theaters, including Motion Pictures and Stage Performance	AUP	
Automobile and Other Vehicle-Oriented Uses		

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Automobile Parts Stores	Prohibited	
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals, and motorcycle stores	UP(PH)	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building:		
When not abutting R-District	AUP	
When abutting R-District	UP(PH)	
Drive-in uses	Prohibited	
Surface Parking Lots:		
Eight (8) or fewer Off-street Parking Spaces	AUP	
More than eight (8) Off-street Parking Spaces	Prohibited	
Parking Structures	UP(PH)	

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter 23E.20	ZC	
Requiring a UP under Chapter 23E.20	UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F Subject to Section 23E.68.070
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Accessory Uses and Structures	As per R-5 District	See Table 23D.44.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, including multifamily developments	UP(PH)	Subject to the standards under Section 23E.68.060.F
Group Living Accommodations subject to R-3 Standards	UP(PH)	Subject to the standards under Section 23E.68.060.F
Hospitals	UP(PH)	

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to Section 23E.68.060 .F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		Change of use of an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	Subject to Section 23E.68.070
Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service		
Exterior	UP(PH)	
Interior	AUP	
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter Up to 60 beds More than 60 beds	ZC UP(PH)	See Chapter 23C.10 .
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording Studios Broadcast Studios	AUP UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to	AUP	Subject to the requirements and findings of Section 23C.17.100

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Existing Sites When the Site Is Not Adjacent to a Residential District	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities		
Urban Agriculture		23C.26
Low-Impact Urban Agriculture (LIUA)	ZC	
High-Impact Urban Agriculture (HIUA)	AUP	
Legend:		
ZC -- Zoning Certificate		
AUP -- Administrative Use Permit		
UP(PH) -- Use Permit, public hearing required		

Section 23. That Berkeley Municipal Code Section 23E.68.040 is amended to read as follows:

23E.68.040 Downtown Arts District Overlay

A. The City Council finds and declares that:

1. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley's regional leadership in the arts, and encourage broader economic revitalization of the area.

2. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City's plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, ~~full- and quick-service restaurants~~ seated food service, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area's economic vitality.

B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:

1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and
2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.
3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.

C. No ~~new carry-out food service store~~ Food Service Establishment exclusively providing food for offsite consumption or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

Section 24. That Berkeley Municipal Code Section 23E.68.090.C is amended to read as follows:

23E.68.090 Findings

C. For each Administrative Use Permit obtained under Section [23E.68.040.C](#) to allow a ~~new Food Service Establishment carry out food service store exclusively providing food for offsite consumption~~ or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:

1. The project meets the purposes of the Arts Overlay District as set forth in Section [23E.68.040](#); and
2. The location, size, type, appearance, and signage of the proposed use will:
 - a. Animate and enhance the pedestrian experience on the street; and
 - b. Be generally open to the public evenings and on weekends, whenever practicable

Section 25. That Berkeley Municipal Code Section 23E.98.050 is amended to read as follows:

Section 23E.98.050 Definitions

The following definitions are applicable only in the Civic Center District Overlay:

Live Performance Theatre: An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.

Museum: A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.

Public Market: An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as 75% or more of retail space is devoted to the sale of General or Specialized food products

and no more than 25% of retail space is devoted to one or more of the following
Incidental Uses: owner operated and/or independent ~~Carry Out Food and/or Quick
Service Restaurants~~ Food Service Establishment selling food from local and
regional producers and sales of Retail Products from local and regional produce.

Section 26. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
Phone: (510) 981-7150
Email: shahn@cityofberkeley.info

CONSENT CALENDAR

April 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn & Mayor Jesse Arreguin
Subject: Small Business Support Package

RECOMMENDATION

Refer to the City Manager the development of a package of policies and programs to support the establishment of new, and sustainability of existing small and/or locally owned businesses. Measures to explore, evaluate and report back on as part of the package include, *but are not limited to*:

1. A program to provide financial and other forms of support to small/locally owned businesses and not-for-profits impacted by development projects, either due to direct displacement or to direct or indirect business interference or interruption;
2. A program to reach out to, work with, help develop and attract small/local businesses to establish themselves in Berkeley and to assist existing small/local businesses to remain in Berkeley;
3. Taxes and/or fees on vacant storefronts, buildings and/or empty lots;
4. A One-Stop Small/Local Business Advocacy Center to coordinate, facilitate and expedite permitting, licensing, payment of taxes and fees, inspections, access to city resources, and all other City of Berkeley-related matters, and to provide information about other services available to small businesses;
5. 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;
6. Strengthening and/or expanding the City of Berkeley's Revolving Loan Fund program, including identification of barriers to accessing such loans and potential improvements to Revolving Loan Fund processes, and exploration of additional sources of income for the Fund;
7. Further expanding Buy-Local preferences and policies for the City of Berkeley, establishment and/or monitoring/enforcement of the Buy Local preference included in Section V(D) the City of Berkeley's May 2005 "2020 LRDP Settlement Agreement" with UC Berkeley, and identification of other opportunities to negotiate Buy-Local agreements with large purchasers in Berkeley, including Development projects; and
8. Exploration of a Legacy Business-type program for Berkeley, inspired by San Francisco's Legacy Business program, to identify, support and retain long-time local businesses.

FINANCIAL IMPLICATIONS

Staff time to explore measures and report back to Council a recommended package of programs and policies to implement or fund.

BACKGROUND

Small businesses are the backbone of Berkeley's commercial health, and represent a significant portion of Berkeley's good-paying jobs. Small businesses also contribute to the distinct character that Berkeley is known for, and are considered by many to be preferable to big box and chain retailers.

A number of initiatives to support small businesses have come before the City Council in the past several years (see Attachments), including the recommendation to create a Small Business Office from then-Councilmember Arreguin¹, but significant action has not yet been taken to create a comprehensive set of policies and programs aimed at supporting this important and highly valued business sector. The recommendations put forth here are intended to address a variety of needs and challenges that small businesses face, and to establish programs and policies for the City to provide additional support and resources to the small business community.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts

CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, 510-981-7150

ATTACHMENTS

1. Small Business Development Package, Councilmember Arreguin, 2016
2. Vacancy Registration Fee Item, Councilmember Arreguin, 2014
3. Berkeley Small Business Item, Councilmember Arreguin, Oct 29, 2013
4. Settlement between the City of Berkeley and University of California - Berkeley, 2005

¹ [http://records.cityofberkeley.info/Agenda/Documents/ViewDocument/7_7_2016%3B%20CLK%20-%20Report%20\(Public\)%3B%20DISTRICT%204%3B%20%3B%20SPECIAL%3B%20SMALL%20BUSINESS.pdf?meetingId=236&documentType=Agenda&itemId=2574&publishId=6600&isSection=false](http://records.cityofberkeley.info/Agenda/Documents/ViewDocument/7_7_2016%3B%20CLK%20-%20Report%20(Public)%3B%20DISTRICT%204%3B%20%3B%20SPECIAL%3B%20SMALL%20BUSINESS.pdf?meetingId=236&documentType=Agenda&itemId=2574&publishId=6600&isSection=false)



Jesse Arreguín
City Councilmember, District 4

ACTION CALENDAR

July 7, 2016

(Continued from June 28, 2016)

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Small Business Development Package

RECOMMENDATION:

Refer to the City Manager the creation of a Small Business Office charged with implementing a package of policies to support new and existing small businesses, including but not limited to:

1. Coordinate the intake of permitting documents to streamline the startup process and improve efficiency;
2. Enforce and advertise the existing Buy Local Bid Preference Policy, and increase the bid discount for local businesses by an additional 5% to a total bid price discount of 10%;
3. Provide business counseling and develop informational materials to inform and assist small businesses through the startup and permitting process;
4. Continue outreach for the Revolving Loan Fund to ensure small businesses take advantage of this existing finance mechanism;
5. Promote businesses and local purchasing by developing activities such as Small Business Week;
6. Explore the creation of tax incentives to attract and retain locally-owned small businesses;
7. Review existing permitting requirements and propose amendments to reduce the cost and permitting barriers for new businesses to operate.

FINANCIAL IMPLICATIONS:

Staff time to explore the creation of a Small Business Office and develop policies and programs to further support small businesses.

BACKGROUND:

Berkeley's small businesses are a cornerstone of our community and local economy. Not only do they support the diversity Berkeley is known for, but small businesses are the main creators of good-paying jobs in our city, providing more than half of all that are available¹. It is estimated that they also give double the amount of charitable donations

¹ "Berkeley's top 10 largest employers provide approximately 34,000 of the nearly 70,000 jobs in the City".

to local nonprofits that large businesses do.² Despite the numerous benefits they provide, the increased prevalence of big box retailers in the East Bay, combined with local development and demographic shifts, is threatening the viability of many small businesses in the city.

Currently, small businesses in Berkeley must navigate several obstacles when starting up, including financing, complicated city processes, and incomplete information. On October 29, 2013 our office provided Council with an information item (Attachment 1) on these challenges. While both this item and Councilmember Moore's 2009 item to bolster the city's Buy Local program (Attachment 2) made suggestions, significant action has yet to be taken. This proposal builds upon these previous efforts, defining the next steps needed to encourage and support small businesses.

A Small Business Office is the most efficient solution to coordinate the numerous activities and adequately support small businesses in Berkeley. Many other cities, including San Francisco and San Diego, developed small business offices that have been enormously successful at centralizing the coordination of small business processes and resources. Doing so eases the burden on both staff and new or growing small businesses by streamlining the process, while providing a comprehensive resource. A Small Business Office tasked with the coordination of startup and permitting processes, outreach, and communication would greatly assist Berkeley in its goals of assisting and attracting small businesses.

Small businesses can be supported by a package of policies, including but not limited to the following:

Coordinated Intake

Coordinated intake of permitting applications will greatly reduce redundancy and improve efficiency of the permitting process. In the current system business owners must apply for different permits separately at multiple city departments, which creates an unnecessary obstacle of time and money. By consolidating intake into one channel via case managers, the city can improve the flow and tracking of the permitting process while reducing stress and confusion to business owners.

Buy Local and City Purchasing Policy

The city's current Buy Local Ordinance has not been updated since 1983. To improve city support of local small businesses, the Buy Local Ordinance should be increased to provide a 10% bid discount to local small businesses, while maintaining the additional 5% discount for women and/or minority owned businesses that already exists. Outreach and advertising of the Buy Local Ordinance should be increased as well; many small businesses are unaware that they qualify for bid discounts and simply need to check a box on vendor forms. Business counseling and staff training could ensure awareness of the ordinance and thus effective enforcement and participation.

Statistical & Economic Profile. City of Berkeley, Office of Economic Development.

² "Why Buy Local?" *Sustainable Connections*, Sustainableconnections.org.

Business Counseling and Informational Materials

In order to help navigate the process of opening and maintaining a successful small business in Berkeley, counseling and informational materials should be provided, especially on permitting processes and policies like the Buy Local initiative. The City of Detroit has developed an effective and innovative tool called BizGrid, a user-friendly infographic and related website directory that provides process information and points of contact for startups. A similarly easy-to-use infographic could be a low-cost way to increase outreach to potential business owners in Berkeley and provide information on business startup, permitting, or other processes. These types of informational materials, in tandem with counseling, would assist in promoting existing programs that require more participation such as the Revolving Loan Fund.

Promote the Berkeley Revolving Loan Fund

The Berkeley Revolving Loan Fund is an incredible resource for small businesses in the city, but is underutilized. The Loan Fund Board does not receive enough applications to provide the amount of loans they would like, despite efforts increase eligibility rates through easing criteria. By improving the Berkeley Revolving Loan Fund outreach and advertising, the fund can increase the number of applicants received and support more small businesses.

Run Outreach and Small Business Development Programs

Events for and in support of small businesses should be developed. The City of Berkeley should create a Small Business Week, similar to Oakland and San Francisco, as well as consider other workshops and events.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

ATTACHMENTS:

1. Berkeley Small Business Item, Councilmember Arreguin, October 29, 2013
2. Strengthening Buy Local Ordinance Item, Councilmember Moore, February 23, 2010
3. Buy Local Resolution



Jesse Arreguín
Councilmember, District 4

ACTION CALENDAR

September 9, 2014

(Continued from July 8, 2014)

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Vacancy Registration Fee

RECOMMENDATION:

Refer to the City Manager the establishment of a registration fee for vacant ground floor commercial spaces as well as undeveloped vacant lots throughout the City of Berkeley.

FINANCIAL IMPLICATIONS:

Unknown staff costs associated with the establishment of a fee program; however, some work has already been commenced by staff in response to the original referral. Potential cost recovery upon implementation.

BACKGROUND:

Vacant commercial spaces and lots often create blight, attract undesirable behavior, and cause economic disruptions, whose externalized impacts are felt by surrounding neighbors, businesses, and ultimately the City who must expend considerable resources addressing such impacts.

On December 7, 2010, the Berkeley City Council adopted the “Encouraging Economic Development and Increasing City Revenue from Business Activity” proposal from Councilmembers Capitelli, Wengraf and Moore.

Part of the item referred to the Planning Commission the following issue:
“Investigate providing incentives to property owners to encourage leasing and establish disincentives to motivate property owners not to leave their properties vacant.”

On September 20, 2011, Council voted to refer to the City Manager the issue of vacant storefronts and the development of a fee. Subsequently, staff determined after further study that a legally permissible fee would not be sufficiently high enough to achieve the desired incentive and that, given the objective, a tax would be a more effective option; however, a tax must be voted on directly by the voters to go into effect.

In the latest round of considering the placement of ballot measures for the upcoming fall election, a vacancy tax polled favorably at 67 percent approval; however, due to the pressing need for other revenue measures, a vacancy was not pursued for this election

cycle in order to ensure the likelihood that much needed revenue for City infrastructure will be passed by the voters.

This referral only differs from the original referral in its inclusion of undeveloped vacant lots. Throughout Berkeley, especially in residential neighborhoods, undeveloped lots that are not properly maintained become overgrown with vegetation, often posing a fire hazard, attract graffiti and other illegal activities, and harbor pests. The resulting nuisances spur ongoing City intervention and abatement notices. A fee on undeveloped lots will help the City recover the costs associated with monitoring and responding to such lots.

The establishment of a vacancy registration fee in the interim before the next available general election will establish the following goals:

- Begin the recovery of costs incurred by the City responding to issues associated with vacancies
- Provide comprehensive data that does not currently exist on vacancies in order to formulate an effective vacancy tax
- Evaluate the implementation of such a program and any attendant issues in order to inform the creation of a vacancy tax
- Provide an initial incentive for property owners to ensure a positive and active use rather than a vacancy

In establishing a vacancy registration fee program, the City should consider minimum maintenance standards for when or how much of the fee would apply, with the potential waiving of the fee if the owner agrees to allow a positive interim use, such as an art exhibit or workspace in the case of vacant commercial storefronts, or a community garden in the case of undeveloped lots. Consistent with the previous proposal, the City should also consider **appropriate waivers in cases of hardship or extenuating circumstances**.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

ATTACHMENTS:

1. Council Item: Vacancy Registration Fee. Sept. 20, 2011.



Jesse Arreguin
Councilmember, District 4

ACTION CALENDAR
September 20, 2011

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to City Manager: Vacancy Registration Fee

RECOMMENDATION:

Refer to the City Manager the attached proposal for a Vacancy Registration Fee for review and the development of a policy to address the issue of vacant ground floor commercial spaces throughout Berkeley.

BACKGROUND:

On December 7, 2010, the Berkeley City Council adopted the "Encouraging Economic Development and Increasing City Revenue from Business Activity" proposal from Councilmembers Capitelli, Wengraf and Moore.

Part of the item referred to the Planning Commission the following issue:

"Investigate providing incentives to property owners to encourage leasing and establish disincentives to motivate property owners not to leave their properties vacant."

Vacant storefronts can be found in almost every commercial district in Berkeley. While part of this problem is due to the current recession, it is also often due to the square foot rents that are charged for vacant commercial space, which can be financially prohibitive for some small businesses. As a result, commercial spaces remain vacant, creating a significant financial and economic impact on our community.

The social impact of vacant storefronts is significant. It not only degrades the character of our community, but creates visual blight and affects the desirability of new businesses locating in an area, which in turn affects city tax revenues.

The economic impact of vacant storefronts is also important and is unaddressed. While some property owners cannot find a tenant to fill a vacant space, and should not be unfairly penalized, there are property owners who have charged higher rents for vacant commercial space and have not lowered rents as a way to find suitable tenants. As a result the property remains vacant. Additionally, there have been issues with the maintenance of some vacant storefronts and vacant storefronts sometimes attract undesirable activity. This has resulted in the investment of city resources (Police, Public Works, Neighborhood Services, Health) to address such problems. The city is not

compensated for the cost of providing such services which impacts our city budget and our ability to response to other problems in our community.

There clearly is a social and financial impact from vacant storefronts, which must be addressed. The attached proposal for a Vacancy Registration Fee was developed after reviewing a number of policies adopted by other cities to address vacant property, including vacant ground floor commercial space.

The proposal recommends a vacancy registration fee for commercial properties which would go into effect within 6 months after a vacancy occurs and would implement an escalating fee schedule : a \$180 registration fee and an escalating fee of \$300 for every six months the property remains vacant. The proposal also suggests establishing the requirement that the space meets minimum maintenance/street presence standards, which if not meet the owner would be subject to additional fees.

Many other cities, including cities in California, have adopted vacancy registration fees to deal with the issue of vacant commercial and residential property. See attached chart describing vacancy registration fee policies in other cities. The District of Columbia vacancy registration tax and fee schedule (based on Wilmington, Delaware's) seems most relevant to Berkeley. Current Washington DC has a registration tax of \$250.00 annually, and for Class 2 properties (which are mainly comprised of vacant storefronts), they have a tax of \$1.65 per 100 dollars of assessed value.

In addition, many cities in California charge a vacancy registration fee ranging from \$75 to \$ 603 (though most seem to be in the range of \$150). Many however, seem geared to addressing the problem of vacant residential properties in foreclosure and the fee is meant to raise money for maintenance in order to ensure that the properties do not become blighted.

The policy in San Jose is geared towards all vacancy buildings in general, and involved an escalating fee schedule.

This item does not recommend that the City Council adopt the proposal or that the City Manager specifically recommend this proposal, it is simply referring a suggested framework to the City Manager for consideration in responding to the December 7, 2010 City Council referral.

FINANCIAL IMPLICATIONS:

Unknown. Some staff time will be involved in reviewing, researching and developing a proposal for City Council consideration.

CONTACT PERSONS:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Proposal for Vacancy Registration Fee
2. Chart summarizing vacancy registration fee policies in other cities

Proposal for Vacancy Registration Fee for Berkeley

Background:

Based on research of policies adopted in other cities and square foot rents and economic conditions in Berkeley that have resulted in vacancies, an ideal policy would involve a progressive registration fee schedule with a grace period to allow sufficient time for a property owner to seek a renter/buyer, with a fee high enough to incentivize landlords to lower rents or actively find a renter/buyer, to create a disincentive for leaving commercial space vacant for long periods of time and minimize the impacts on the community. The fee policy should include clear criteria for the maintenance of vacant storefronts with financial disincentives to discourage blight. There should be limited deferrals/exemptions to address situations where a building is being renovated or to address economic hardship. The fee should not only be a disincentive to holding ground floor commercial space vacant but also to help recover some of the costs associated with city response to problems with vacant properties.

Goals:

- **To discourage vacancies of ground floor commercial space and to encourage property owners to maintain vacant property to prevent blight.**
- When would the fee go into effect? One option includes requiring the property to be registered and if there is active pursuit of a tenant/buyer, the fee would not go into effect, however if after 6 months the property is not occupied, the fee would go into effect. Alternatively, the fee could go into effect within 6 months (or another threshold) after a vacancy occurs.
- Introduce progressive fee schedule. Longer the duration of vacancy the higher the fee.
- Set fee at a rate high enough, to incentivize landlords to lower their rents but not too high so as to discourage prospective landlords to buy property in Berkeley, or to create a reputation of Berkeley being “unfair to businesses”.
- Determine exceptions and design a clear policy that would ensure that exemptions are being granted to circumstances that legitimately meet the criteria and are not a loophole around the policy.
- Include a minimum set of standards for maintenance for vacant space, so as to minimize blight. If standards are not met, additional fees would be imposed.
- Determine the consequences of failure to comply with the registration fee requirements. One option could include placing a lien on the property.
- Create a system that would be clear and as efficient as possible. Minimize staff time and costs associated with implementing system.

Legal Issues:

- Legally it is difficult to adopt a “registration tax” without going through a Proposition 218 process or going to the voters.

- A fee is most easily justified and able to be adopted if it is an impact fee, used to cover costs of maintenance and security around vacant store fronts.
- It is also more easily justified if it is a lump sum that escalates depending on the amount of time the space is vacant, rather than varying depending on square footage. It would provide more clarity and predictability for the owner and would make the policy easier to implement. Additionally, the impacts are similar regardless of the size of the property.

Brief discussion of past relevant policies that motivate current proposal:

The District of Columbia vacancy registration tax and fee schedule (based on Wilmington, Delaware's) seems most relevant to Berkeley. Current Washington DC has a registration tax of \$250.00 annually, and for Class 2 properties (which are mainly comprised of vacant storefronts), they have a tax of \$1.65 per 100 dollars of assessed value.

In addition, many cities in California charge a vacancy registration fee ranging from \$75 to \$ 603 (though most seem to be in the range of \$150). Many however, seem geared to addressing the problem of vacant residential properties in foreclosure and the fee is meant to raise money for maintenance in order to ensure that the properties do not become blighted.

The policy in San Jose is geared towards all vacancy buildings in general, and involved an escalating fee schedule.

Suggested Proposal:

Establish a vacancy registration fee for commercial properties, which would apply to vacant ground floor commercial space. Adopt an escalating fee schedule: \$ 180 registration fee and an escalating fee of \$300 for every six months the property remains vacant.

When would the fee go into effect?

One option would require the property owner to register with the city and pay a fee as soon as the commercial space becomes vacant. The fee could be refunded if it is rented within 6 months of vacancy. If the space is vacant for 6 months or more, the fee would go into effect at the beginning of the 6th month of vacancy and would escalate depending on how long the property remains vacant.

Another option is that the fee would go into effect 6 months after a vacancy occurs.

Additionally, during the time the property remains vacant, the property owner is responsible for meeting the minimum standards for maintenance/street presence for the vacant space:

Suggested standards include:

1. **free of graffiti, clean windows, doors and storefront – perhaps with “post no bills” standards with the exception of rental information,**
2. **clean interior space – no “junk” or fixtures visible from the sidewalk/street,**
3. **clean and serviceable awnings,**
4. **signage in good condition,**
5. **“no boarding up” of windows or doors unless legally required,**
6. **landscaping up kept and in good condition,**
7. **parking lots clean of debris, weeds and in good condition and, if exclusive to the storefront, chained to prevent auto access**
8. **24/7 lighting at street and motion lighting as necessary at auxiliary entrance/exits.**

The City could adopt accelerating fines for non-compliance with maintenance/street presence standards, which would increase over time if the property is unmaintained.

Incentives:

As explained above, if an owner rents a space within 6 months of vacancy, then the fee would be refunded.

Additionally, the escalating fee schedule and fees for lack of maintenance of property create incentives for owners to rent and maintain spaces.

Also, the fee could be lowered, if the owner agrees to rent the space temporarily to a positive public use such as arts performance or gallery space.

Reasoning behind this proposal:

Since the Washington DC fee seems very effective, we propose an analogous fee that would be a lump sum (rather than per \$100 of assessed value as is the case in DC).

A Better Assessment?

- Given legal constraints in adopting taxes, it would be better if the fee were legally an impact fee that was based on the costs incurred to the City by these vacant storefronts (and according to the City Manager’s office, vacant lots/storefronts have remained vacant for long periods and can significantly drain city resources.) This fee could be also used as a model to address the issue of vacant commercial and residential lots.

- The City does not currently have this kind of information readily available but can gather it and attempt to quantify the costs. Some of the parameters suggested are: the cost of increased security, Police response, Public Works response and Mental Health services; the amount of time spent in addressing these vacant properties by Neighborhood Services; the opportunity costs of lost revenue in the form of building and business permits, in property taxes and in business license fees.
- If the costs could be properly quantified, it would be easier to determine a progressive fee schedule that ultimately would help recoup some of the costs to the city.

Suggested exemptions:

The property would be exempt from the registration fee requirements entirely or temporarily if they met the following criteria:

1. The property is under active construction, rehabilitation, renovation or repair and has valid building permit(s) to make it fit for occupancy.
2. The owner is actively seeking to sell or rent the property and has not found a tenant/buyer and payment of the fees would be an economic hardship.

The City would need to establish criteria to determine if property meets exemptions. How do you determine if someone is actively seeking to sell or rent the property? Ads for vacant space? Number of open houses? Number of prospective tenants who have expressed interest in property? Also how is economic hardship defined?

City/County	Fees	Status	Enacted Date	Reg. Timeframe
Alameda	\$603.00 annually	Enacted		90 days
Apple Valley	TBD	Proposed		
Baldwin Park	\$90/year	Enacted	4/15/2009	10 days
Banning	75	Enacted	9/9/2008	10 days
Barstow	TBD	Enacted	2/16/2010	10 days following vacancy
Beaumont	\$150 annually	Enacted	8/7/2008	10 days
Bellflower	TBD	Enacted	5/26/2009	10 days
Benicia	157.11	Enacted		10 days
Blythe	100	Enacted	10/28/2008	10 days
California City	40	Enacted	8/4/2009	10 days
Calimesa	150	Enacted	6/16/2008	30 days
Canyon Lake	130	Enacted	4/9/2009	15 days
Cathedral City	\$70.00 annually	Enacted	5/28/2008	10 days
Chowchilla	\$150 first time; \$100 renewal	Enacted	8/7/2007	10 days
Chula Vista	\$70.00 *see key points of interest*	Enacted		10 days
Claremont	\$70.00 annually	Enacted	1/1/2009	10 days
Cloverdale	120	Enacted		10 days
Coachella	65	Enacted	6/1/2009	10 days
Coalinga	\$150 per calendar year	Enacted		10 days following vacancy
Colton	\$150; \$75 for renewal	Enacted	5/19/2009	10 days
Commerce	TBD by Council resolution	Enacted	9/18/2009	10 days following vacancy
Compton	35	Enacted	7/22/2010	10 days
Covina	\$100.00 annually	Enacted	9/2/2008	10 days
Desert Hot Springs	\$60.00 annually	Enacted	12/16/2008	10 days
Dixon	n/a	Dead		10 days from filing of NOD or property transfer
Downey	No Fee	Enacted	1/13/2009	10 days
East Palo Alto	300	Enacted	5/4/2010	10 days
El Monte	\$198(Reg) \$200 (Deposit)	Enacted	7/20/2010	10 days following the filing of N.O.D.
Elk Grove	10	Enacted		10 days
Fairfield	\$171.00 annually	Enacted	7/15/2008	10 days
Fresno	None; TBD	Enacted	12/15/2008	10 days
Garden Grove	150	Enacted	12/25/2008	10 days

Glendora		180	Enacted		10 days
Gonzales		107	Enacted		10 days
Greenfield	\$50.00 annually		Enacted	9/23/2008	10 days
Hanford	\$200; pro-rated after July 1st each year		Enacted	12/1/2008	10 days
Hayward	\$205 Annual Fee for failing to Register \$437 Quarterly Monitoring Fee		Proposed		
Hesperia	TBD		Proposed		TDB
Highland		\$65	Enacted	10/13/2009	10 days
Hollister		\$265	Enacted		Upon Notice
Imperial		\$50	Enacted	9/3/2008	10 days
Indio	Initial \$150/ \$100 annually		Enacted	4/4/2008	10 days
Inglewood		150	Enacted	1/1/2011	10 days
Ione		\$50	Enacted	6/1/2009	10 days
Kerman		\$50	Enacted	9/3/2008	10 days
Kingsburg	\$50 annually		Enacted	12/3/2008	10 days
La Mirada	\$100 annually		Enacted	2/24/2009	30 days
La Puente		\$100	Enacted	11/17/2009	10 days
Lake Elsinore	\$71 annually		Enacted	4/25/2008	10 days
Lemoore	None		Enacted		10 days
Lompoc		0	Proposed		TBD
Long Beach	\$155 annually		Enacted	1/4/2011	30 days following vacancy
Los Angeles	\$155 annually**see key points of interest**		Enacted	7/8/2010	10 days
Lynwood		\$250	Enacted	4/21/2009	10 days
Madera		55	Enacted	10/15/2008	10 days
Menifee		\$125	Enacted		0
Modesto		0	Enacted	5/5/2009	10 days
Montclair	TBD		Enacted	1/5/2009	10 days
Montebello		120	Enacted	5/1/2009	10 days
Murrieta	\$70.00 annually		Enacted	3/4/2008	10 days
Oakland	\$568.00 annually		Enacted		30 days
Oakley		65	Enacted	6/24/2010	10 days
Ojai		90	Enacted	9/22/2009	10 days

Ontario	\$110/annually; \$55 for change of information	Enacted	5/5/2009	10 days	
Pacific Grove	\$116	Enacted	4/16/2011	10 days following vacancy	
Palm Springs	\$18.00 annually	Enacted	7/30/2008	10 days	
Palmdale	One time fee of \$110.00	Enacted	2/6/2008	10 days	
Pasadena	\$356.00 annually	Enacted		30 days	
Patterson	\$90; \$80 for renewal	Enacted	12/1/2008	10 days	
Perris	\$130 annually	Enacted	9/14/2008	10 days	
Placentia	First time \$50 Renewal \$20	Enacted	10/7/2008	10 days	
Pomona	TBD	Proposed			
Rancho Cucamonga	No Fee	Enacted	3/18/2009	30 days	
Redlands	\$82.42	Enacted		10 days	
Rialto	\$106.00 annually	Enacted	6/17/2008	10 days	
Sacramento	N/A	Enacted		N/A	
San Bruno	\$150	Enacted	1/10/2009	30 days	
San Diego	None-registration is voluntary	Enacted			
San Diego County	\$0	Enacted	6/16/2009	None	
San Francisco	\$765	Enacted	8/18/2009	30 days	
San Jacinto	TBD	Enacted		10 days	
San Jose	Escalating fee schedule	Enacted	12/18/2007	Upon notice from city.	
Santa Clarita	\$0; Registration is voluntary	Enacted			0
Santee	\$190.00 annually	Enacted	11/1/2007	10 day	
Seaside	\$50	Enacted	3/17/2011	10 days	
Selma	\$200.00 annually	Enacted	8/4/2008	10 days	
Soledad	\$150	Enacted		10 days	
South San Francisco	\$125	Enacted	3/1/2009	10 days	
Stockton	N/A	Dead			
Suisun City	\$50	Enacted	3/17/2009	10 days	
Temecula	None	Enacted	5/7/2008	30 days	
Tulare	\$70	Enacted	6/16/2008	10 days	
Vacaville	\$550 monthly when code violations are outstanding	Enacted	7/22/2008	30 days	
Vallejo	TBD	Proposed		TBD	
Victorville	\$0	Enacted			0

Waterford		160	Enacted		60 days from vacancy/ boarding
Watsonville	\$50.00 annually		Enacted	10/10/2008	10 days
Wildomar		\$100	Enacted		10 days
Winters	none		Enacted	11/17/2009	10 days

Vacant/Abandoned Property Registration Database

City	State	Contact	Overseeing Department	Ordinance Title	City Code	Ordinance Description	Program Website	Program Notes
Chula Vista	CA	Drug Leeper Code Enforcement Manager, City of Chula Vista dleper@ci.chula-vista.ca.us (651) 508-5274	Planning and Building Department	Abandoned Residential Property Program	Ordinance No. 3080 CYMC 15.60 Abandoned Residential Property Registration	An abandoned residential property is: defaulted residential property which mortgage lenders have confirmed vacant. Penalties: • Within 10 days the owner must exercise the abandonment clause in their mortgage contract. • Owner must register the property with the city and pay annual \$70 fee. • Owner must immediately begin to secure and maintain the property to the neighborhood standard. • Owner must hire a local company to inspect the property on a weekly basis. • The property must be posted with the name and 24-hour contact number of the company responsible for the weekly inspection, maintenance and security of the property. An abandoned property is: a property that is vacant and is under current notice of default or subject to trustee's sale, or pending lien sale, or in deed transfer in lieu of foreclosure sale. Penalty: • When lender sends the first notice of default the lender must inspect the property to see if it is occupied. • If it is not the lender must hire a property management company within 5 miles of the property to maintain the home. • The property management company must inspect the property weekly to ensure its compliance with city codes. • Lenders must notify city within 10 days of a home going into foreclosure. • Title holder must pay annual fee of \$60. • The property must be posted with the name and 24-hour contact number of the property management company. A vacant property is: a property that has been unoccupied for a minimum of 30 consecutive days. Penalties: • Owner must register property annually. • Owner must pay registration fee of \$20 x the number residential & commercial units on the property. • Vacant residential properties are taxed at 5.7 times the rate of occupied properties. Vacant commercial properties are taxed at 2.7 times the rate of occupied properties. • Owner must bring building to code compliance. • If the owner does not bring the building to code compliance DCRA has the authority to abate the violation and recover the funds by placing a lien on the property. • City can administer fines up to \$2000 and jail time up to 90 days for unregistered and noncompliant properties.	http://www.ci.chula-vista.ca.us/3080	Enacted April 2, 2008. Modeled on programs in Chicago, Detroit, and Chula Vista.
Washington	DC	Department of Consumer and Regulatory Affairs (202) 442-4332	Department of Consumer and Regulatory Affairs	Vacant Property Registration Ordinance	DC Code 42-3131.12	A vacant property is: a property that has been unoccupied for a minimum of 30 consecutive days. Penalties: • Owner must register property annually. • Owner must pay registration fee of \$20 x the number residential & commercial units on the property. • Vacant residential properties are taxed at 5.7 times the rate of occupied properties. Vacant commercial properties are taxed at 2.7 times the rate of occupied properties. • Owner must bring building to code compliance. • If the owner does not bring the building to code compliance DCRA has the authority to abate the violation and recover the funds by placing a lien on the property. • City can administer fines up to \$2000 and jail time up to 90 days for unregistered and noncompliant properties.	www.dcr.dc.gov/property/vacant-property	Enacted December 28, 2008. Individuals can report vacant properties by sending a form (available on website) to the city. The property is then inspected for code compliance.
Wilmington	DE	Department of Licenses and Inspections (302) 576-3096	Department of Licenses and Inspections	Vacant Property Registration Fee Program	Chapter 4, §4-27, 125.0 et seq.	A vacant property is: a building that have been vacant for more than forty-five (45) consecutive days. Penalties: • Owner must register his or her property. • Owner must pay a registration fee for each property that has been vacant for at least one (1) year. • If owner fails to register all vacant properties, to amend the registration statement if applicable, or pay the registration fee the city may institute criminal proceedings against the owner of the property, including a potential fine of \$500. In addition, the city may bring a civil action to collect any unpaid registration fees. Fee schedule: • 1 year vacant: \$500 • 2 years vacant: \$1,000 • 3-4 years vacant: \$2,000 • 5-9 years vacant: \$3,500 • 10 years vacant: \$5,000 • 10+ years vacant: \$5,000, plus an additional \$500 for every year the property is vacant over 10 years.	www.ci.wilmington-de.us/125	Passed in 1980's and revised in 2003. The \$25 annual fee was reduced with current fee schedule. City estimates that within first three years after the revision vacant property owners spent \$30 million on renovations and recouped 330 vacant buildings.

Vacant/Abandoned Property Registration Database

St. Paul	Steve Wagner Vacant Buildings Supervisor (651) 286-2542	Planning and Development Services	Vacant Building Registration Ordinance	Chapter 45	A vacant building is: a building that is unoccupied for 30 or more days and is: <ul style="list-style-type: none"> • Unsecured, or • Secured by other than normal means, or is • A dangerous structure, or is • Condemned, or • Has multiple housing or Building Code violations, or • Is condemned and illegally occupied, or • Is unoccupied for a period of time longer than one year during which time the Enforcement Officer has issued an order to correct nuisance conditions. <p>Penalties:</p> <ul style="list-style-type: none"> • Owners must submit a Vacant Building Registration Form within 30 days, describing plans for rehabilitating and reoccupying or demolishing the building. • Owners must disclose all pertinent ownership information. • Owners must disclose all pertinent lien holders. • Owners must disclose any current Truth-in-Sale of Housing Disclosure Reports. • Owners must pay an annual Vacant Building Registration fee of \$250.00 within 30 days of receiving this letter. • Owners must provide uncountered access to all portions of the premises of the buildings to permit the Enforcement Officer to make a complete inspection. • Owners must keep building secure and code compliant. 	133.01.00000.01.0001.0001	Code specifies exemption for houses that have recent fire damage.
Albany	Robert C. Forezzi, Sr. Deputy Chief, Albany Department of Fire and Emergency Services rcforezzi@albany-ny.org (518) 434-8045	Fire Department's Division of Buildings and Codes	Vacant Building Registry (passed in 2000) & Vacant Building Committee (created in 2005)	Ordinance No. 5182-88, Article XIV § 133-78	A vacant building is: a building or portion thereof that is unoccupied or illegally occupied for more than 30 days and is: <ul style="list-style-type: none"> • unsecured, or • secured by other than normal means, or • is deemed unsafe by the Dept. of Fire, Emergency and Building Services, or • has multiple housing or building code violations, or • is unoccupied for over 365 days during which time the enforcement officer has issued an order to correct code violations <p>Penalties:</p> <ul style="list-style-type: none"> • Owner must register the property & pay fee. • Owner must submit a vacant building plan for approval - must include either plans and timeframe for demolition, or plans to secure the building to compliance and justification for vacancy, or plans for rehabilitation and occupancy which will be completed in less than 365 days. • If ownership is transferred the new owner must re-register within 30 days. <p>Fee schedule:</p> <ul style="list-style-type: none"> • 1 year vacant: \$250 • 2 or 3 years vacant: \$400 • 4 years vacant: \$1,500 • 5 or more years: \$2,000 	No program website	First enacted in 2000. In Jan 2008 fees increased from \$200 to \$250 the first year. Legislation is currently enforced by the "Block by Block" initiative, which targets streets with the most vacant properties by surveying them looking for violations. The initiative also uses a vacant buildings court to give summonses to unregistered vacant properties.
Binghamton	Keith Heaton Vacant Properties Officer 38 Hawley Street, 4th floor Binghamton, NY 13901 (607) 772-7010 (607) 772-7162 fax	Building and Code Department	Vacant Building Registration Ordinance	\$285-6	A vacant building is: a building, a portion of a building, or a structure which is any one or more of the below: <ul style="list-style-type: none"> • Unoccupied and unsecured; • Unoccupied and secured by other than normal means; • Unoccupied and an unsafe building as determined by an Enforcement Officer; • Unoccupied and enforcement officer has issued an order to correct code violations; • Illegally occupied; or • Unoccupied for a period of time over 30 days. <p>Penalties:</p> <ul style="list-style-type: none"> • Owner must register and pay an annual \$50 fee. • If the building remains vacant for a year or more, the owner must submit an annual \$500 vacant building fee. 	607.02.00000.01.0001.0001	Enacted 5/3/07. Legislation part of "Bright Prevention Initiative" developed by a task force made up Code, Building and Construction, Police, Legal, Planning and Community Development, Parks and Rec, and Finance officials. Law modeled after legislation in Albany and Rochester NY, Wilmington, DE, and Evanston, IL.

Vacant/Abandoned Property Registration Database

Cincinnati	OH	Edward Cunningham Supervisor of Inspections edward.cunningham@cincinnati-oh.gov (513) 352-1809	Department of Buildings and Inspections	Vacant Building Maintenance License	Ordinance 59-2006 (Amendment) Sections 1101-77, 78, 128	<p>A vacant property is: a property ordered vacated due to non-compliance of a 13 point code by Buildings & Inspections Dept.</p> <p>Penalties:</p> <ul style="list-style-type: none"> • Applicant must apply for Vacant Building Maintenance License within 30 days of order to vacate. • Applicant must pay fee or request waiver. • Applicant must provide evidence of general liability insurance for property (min of \$300k for residential \$1M for commercial or industrial) • Building must be brought into VBML compliance (demolished, rehabilitated, or up to code) within 60 days of application. • Unpaid fees become liens. <p>Fee schedule:</p> <ul style="list-style-type: none"> • \$800/year for properties that have been ordered or kept vacated for less than 1 year • \$1,800/year for properties that have been ordered or kept vacated for at least 1, but less than 2 years • \$2,700/year for properties that have been ordered or kept vacated for at least 2, but less than 5 years • \$3,500/year for properties that have been ordered or kept vacated for at least 5 <p>A vacant building is: a building that has been unoccupied for 30 days or more and is:</p> <ul style="list-style-type: none"> • unsecured, or • secured by other than normal means, or • a dangerous structure, or • condemned, or • has city code violations, or • condemned and illegally occupied. <p>Penalties:</p> <ul style="list-style-type: none"> • Owner must register & pay annual \$200 fee. • Owner must present a plan for continued care and upkeep with a timetable for restoring the building to appropriate occupancy or a demolition plan. • Owner must keep building secured and maintain the building and its grounds. Building must not be used for storage. • If ownership is transferred the new owner must re-register within 30 days. 	www.ci.cincinnati.oh.us/5522	
Stow Falls	SD	Building Services 605-367-8254	Planning and Building Services	City of Stow Falls Ordinance Article IX Vacant Buildings	Article IX §11	Exemptions made for buildings under permitted construction.	www.ci.stow.vt.us/265-263	
Milwaukee	WI	Martin Collins MCOLL@milwaukee.gov (414) 286-2562	Department of Municipal Inspections	Property Recording Ordinance	Chapter 200, subchapter 8 & Chapter 275 § 32-7	Enacted in 1993 as part of the Property Recording Program. The program is designed to deal with vacant properties, although only records occupied property.	www.ci.milwaukee.wi.us/6462.gov	



Jesse Arreguín
Councilmember, District 4

INFORMATION CALENDAR

October 29, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Berkeley Small Businesses

INTRODUCTION:

Providing more than half of the jobs available in the City of Berkeley¹, small businesses are crucial to the fiscal health and economic vibrancy of our City. In order to foster and support our local small business, it is incumbent upon the City to analyze the unique challenges facing small businesses and how the City may better serve the businesses that serve our community.

STARTUP ISSUES:

Licensing and Permitting

Most startup processes for privately-owned businesses undergo the following formula: Conception and Planning; Business Registration (Licensing and Permitting); Storefront Preparation; and Execution. Licensing and Permitting is a phase of extensive communication between local government institutions and entrepreneurs during the startup phase. Lack of an efficient licensing and permitting process bottlenecks the ability of entrepreneurs to realize their vision. This section explores Berkeley's Licensing and Permitting process for startups and explains why certain features of the current model can be problematic for many aspiring business owners.

The first site to which many Berkeley entrepreneurs look for guidance is the Permit Service Center. Berkeley's Permit Service Center (PSC), located at 2120 Milvia St., provides direct customer service to those seeking building permits and zoning information. Applications for building and zoning permits are accepted, and building permits issued, at the PSC. Permit Specialists at the PSC coordinate building permit application review with other city agencies as needed. Startups need to apply to three different categories of permits and licenses: Business License, Building Permits, and

¹ Berkeley's top 10 largest employers provide approximately 34,000 of the nearly 70,000 jobs in the City (*Statistical & Economic Profile*. City of Berkeley, Office of Economic Development).

Zoning. The Building and Zoning categories contain permits for numerous issues, many of which are governed by other City departments, and for many of which applications are contingent upon business type, location, and other factors. And although entrepreneurs have an idea of where their storefront will be located, information required by building planning permits often include technicalities with which most business owners are not readily familiar.

Although PCS and other departments give entrepreneurs a good starting point, 1) it can leave room for error should not all the materially relevant facts be provided by the entrepreneur, or 2) given the large amounts of information involved, crucial pieces of information can be either overlooked or not clearly explained to the entrepreneur. A recount by the owner of Heat Hot Sauce Shop details the miscommunication, delay, and financial costs that are incurred as a result (Attachment 1).

As another first step, entrepreneurs research online for business registration guidance. While Berkeley's website does have plenty of information on business registration, permitting, and licensing, it is difficult and time-ineffective for users to navigate and unearth the pertinent information. When adequate information cannot be found on the city website, entrepreneurs may visit other websites or ask for advice from individuals who do not work for the City, which often results in misinformation.

Berkeley's Office of Economic Development offers a Resource Guide (<http://tinyurl.com/nx545zd>), "Starting a Business in Berkeley." The Resource Guide demonstrates initiative and provides helpful information, however, it instructs entrepreneurs to apply for permits and licenses in over a dozen different departments, which may seem intimidating and leaves much room for error. The Resource Guide is a general and preliminary checklist that is not tailored to specific industries. The Resource Guide also provides contact information for several nonprofit organizations designed to benefit startups and small businesses. However, these organizations aid in business conception rather than business registration, and departments in the City of Berkeley do not offer recommendations on specific services from certain organizations for different businesses. Additionally, it is difficult for entrepreneurs to assess the cost of startup from only online research or inquiring the Permit Service Center without a building plan underway (Attachment 2). Thus, many Berkeley business owners recount spending much more money on permits or leasing to open their storefronts than initially planned. Numerous entrepreneurs have never successfully opened a storefront due to inadequate capital reserve.

FINANCE ISSUES:

Berkeley Revolving Loan Fund

The Berkeley Revolving Loan Fund supplements, in the form of loans, private financing for tenant improvements, fixed assets such as equipment for businesses, to the extent that private financing is unavailable. These loans typically have lower interest rates than available private loans. The RLF was established in the 1980's with a \$500,000 grant from the Federal Economic Development Administration (EDA) targeting the South Berkeley area but has since expanded to include the entire City of Berkeley. All RLF

loans originate from this original amount plus the money earned from interest on previous loans.

The RLF is designed to address areas of economic distress and help implement the City's economic development strategy for the Target Area as summarized below. Without consistent grants, the RLF is the only financial support that Berkeley can give its small businesses. Coupled with the fact that the RLF is reserved for businesses that cannot obtain traditional financing from banks, there is unsubstantial financial support for the majority of Berkeley's small businesses.

Economic Adjustment Strategy

Businesses in the Target Area often are unable to access private capital for financing business expansion and improvements. Those who can meet private capital procurement requirements may do so at higher prices because of the current credit crunch. Supplementing private financing with RLF funds can reduce the risk of private financing, thereby increasing the availability of private capital to businesses.

Loans will generally be made to small businesses, which are defined as businesses with annual sales of \$1,000,000 or less or otherwise meeting the SBA's definition as a small business. Because the loan program requires approval from the Loan Board, it takes approximately 3-4 months for approved borrowers to receive their funds. This time restriction prohibits many startups from applying to the RLF. Businesses that cannot afford this timeline are referred to a number of non-bank lenders that service Alameda County, including Opportunity Fund and TMC Working Solutions. These non-profit organizations are not run by the local government.

Small businesses will generally need financing and technical assistance. Identified needs will be met by referrals to business workshops conducted by the Small Business Administration (SBA), the Alameda County Small Business Development Center and other local economic business assistance programs. Businesses may receive assistance in developing business plans from several local organizations, including the Alameda County Small Business Development Center, SCORE (Service Corps of Retired Executives), the Women's Initiative for Self-Employment, and the Sustainable Business Alliance.

Additionally, it is encouraged for businesses to have a consultation with local business owners with proven record of success, a list of which is provided by RLF staff.

Financing Policies

RLF loans may be made to qualifying businesses for tenant improvements, fixed assets such as equipment and machinery and real estate transactions on an exception basis. The standard maximum loan size is \$35,000, and loans larger than this amount are approved on an exception basis.

Interest rates on loans will be fixed. The standard RLF interest rate on RLF loans is equivalent to the prime interest rate quoted in the Wall Street Journal plus 2% at the time of loan approval.

There is a \$200 fee for each application. Fees will be credited towards the loan fee and will be refunded if not approved.

Payments will generally be made monthly; however, customized payment structures may be extended to borrowers depending upon their individual cash flow needs. Temporarily reduced or deferred payments may be considered as options in structuring a workout plan. Standard loan terms are 3-7 years fully amortized, depending on the loan amount. In general, loan terms will not exceed the average useful life of the assets being financed.

The RLF is highly encouraged to participate in other financing institutions' loans and/or lines of credit. There is a EDA portfolio requirement in which the RLF may leverage a minimum of two private dollars for each RLF dollar loaned. This leveraging requirement applies to the portfolio as a whole rather than to the individual loan. Private investment is capital invested by the borrower or financing from private entities such as banks.
Equity/Borrower Injection General Requirement

The RLF will require all borrowers to inject owner equity as a percentage of the requested loan amount. The borrower's equity injection should at least 10% of requested loan amount for existing businesses and at least 20% of requested loan amount for startup businesses. Additionally, start up business will be required to provide a secondary source of repayment and a complete business plan.

Collateral pledged for each loan will depend upon the loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. In general, the market value of pledged collateral will equal or exceed the loan.

Financing Restrictions

RLF Capital is subject to an array of financing restrictions, including, among other restrictions, the inability to:

- Acquire an equity position in a private business
- Subsidize interest payments on an existing loan
- Enable a borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets
- Refinance debt if outside the Target Area
- Portfolio Standards and Targets

The goal of the RLF is to target industry clusters to produce the following ranges for allocation of the portfolio:

- Healthcare, environmental services, business services: 50-65%
- Light industry: 10-35%
- Retail: 15-25%

A maximum of 25% of the portfolio shall be loaned to start-up businesses. The portfolio shall maintain a private leverage ratio of 2:1, or \$2 of private dollars or funds to every \$1 in EDA funding.

Every project shall have a new job creation or jobs saved component. The portfolio shall target a cost per job ratio of \$20,000 or less.

Berkeley Revolving Loan Fund Impact

In 2011, Berkeley revamped its small business lending rules following the default of a \$85,000 loan given to a pizza parlor that defaulted on the loan from the city and closed shop in August 2009. The loan was made despite poor credit and no collateral, according to a city report.

According to Michael Caplan, the city's manager of economic development, out of 34 loans made from the South Berkeley Revolving Loan Fund since 1984, just eight have been written off. And since the fund was started with a \$500,000 grant from the federal Economic Development Administration, the balance has grown to \$672,000 despite the city writing off \$350,000 in bad loans. By 2005, 32 RLF loans totaling \$1,658,417 had been originated, and a total of 175 jobs created within or in connection with the Target Area.

According to Elizabeth Garcia, community development project coordinator in the office of economic development, said partly as a result of the pizza parlor issue, the office has not made any more loans since 2008.

Marketing the Berkeley Revolving Loan Fund

The RLF has not been actively marketed in the past two years due to the following factors:

1. A new Administrative Plan was written, and due to backlog at the Economic Development Administration, Federal authorities took approximately one year to approve the new plan.
2. The City of Berkeley struggles to find a competent loan underwriting entity. The most recent loan, approved in July 2013, was underwritten by Board members themselves. The Office of Economic Development seeks to hire a professional underwriter by the end of the year.

Cost of Doing Business in Berkeley

This table provides current information on business classifications and their related Business License Tax rates. A new Business License application must reflect an accurate classification of the business activity, and your annual BLT renewal payment is based on the corresponding rate (based on gross receipts, rents, or other business-specific income). Unless otherwise indicated, rates are for each \$1,000 of income.

Business Classification	Basis	Rate/Flat	Minimum
Administrative Headquarters	Gross Payroll	\$1.20	\$51
Auto/Vehicles for Hire	Per Vehicle	\$215	\$215

(*see note about other permits & fees)			
Business, Personal & Repair Services	Gross Receipts	\$1.80	\$51
Construction Contractor	Gross Receipts	\$1.80	\$51
Entertainment/Recreation	Gross Receipts	\$4.50	\$51
Grocer (retail or wholesale)	Gross Receipts	\$0.60	\$51
Manufacturing	Value Added	\$1.20	\$51
Miscellaneous	Gross Receipts	\$2.40	\$51
Motor Vehicle Sales	Gross Receipts	\$1.20	\$51
Nonprofit Organizations (**see note about other permits & fees)	Flat	\$26	\$26
Private Franchised Recycling / Rubbish Haulers	Gross Receipts	\$1.80	\$51
Private Rubbish Haulers (**see note)	Gross Receipts	\$150.00	\$51
Professional - Semiprofessional	Gross Receipts	\$3.60	\$51
Rental of Real Property	Gross Receipts	\$10.81	\$77
Retail Trade	Gross Receipts	\$1.20	\$51
Solicitor/Peddler	Flat	\$258	\$258
Street Vendors & Sidewalk Food Vendors	Flat	variable	
Wholesale Trade	Gross Receipts	\$1.20	\$51

2012 California Corporate Tax Rates and Exemptions

The rate of inflation in California, for the period from July 1, 2011, through June 30, 2012, was 1.9%. The 2012 personal income tax brackets are indexed by this amount.

Corporations other than banks and financials	8.84%
Banks and financials	10.84%
Alternative Minimum Tax (AMT) rate	6.65%
S corporation rate	1.5%
S corporation bank and financial rate	3.5%

STARTUP RESOLUTION:

City of Berkeley Website

Highly time- and cost-effective small business support with substantial magnitude can be established through quality online resources and services. According to many small business entrepreneurs, the City of Berkeley's current website is overall difficult to navigate and at times counterintuitive, preventing users from accessing important information that is indeed on the website. Additionally, the Berkeley website may in fact be lacking some material necessary for small business owners. Examples of such

material includes: a sequential step-by-step guide for aspiring business owners; definitions and briefs on pertinent business concepts, such as the various types of business ownership; licensing and various other checklists; and comprehensive contact information for every city department and related nonprofit organizations.

The Berkeley website should actively market Visit Berkeley, Berkeley's Convention & Visitors Bureau and Film Office, through search engine optimization and other digital marketing endeavors; highlighting local businesses will expand their brand and increase their revenue by attracting the attention of prospects. The Berkeley website can facilitate storefront establishment by actively marketing its storefront vacancy program Locate In Berkeley, which is a search engine that pinpoints vacant retail space in Berkeley.

In order to reduce complications arising from licensing and permitting, Berkeley may establish an online widget to assist entrepreneurs through the licensing process. A prime example of such a product is San Francisco's License123, the city's initial phase in its movement to streamline licensing and permitting for San Francisco businesses. Due to variability in cost and scheduling for each industry, License123 tailors resources and action items to different types of businesses. By using a search engine, License123 consolidates the necessary permits and licenses for over 20 industries and 500 sub-industries and emails a free report to the enquirer, providing clarity as to the documents required for business establishment in that field. The emailed report includes: Actual License Applications; Instructions for Filing the Applications; Licensing Authority's Contact; and Fees and Timeline Information. License123 also provides a live multilingual hotline. Individuals may schedule an appointment and visit the License123 office for a one-on-one appointment with a representative who assists in business startup.

Workshops

Deputy Planning Director Wendy Cosin has worked with the Berkeley Chamber of Commerce on providing workshops to interested entrepreneurs and individuals on the licensing and permitting side of business establishment in Berkeley. Dedicating full-fledged effort to marketing Cosin's workshops as well as providing an easily-accessible archive of them would correctly inform entrepreneurs and business owners regarding government-related business issues.

Business Counseling

To maximize the potential of small business establishment in Berkeley, business owners need a centralized space upon which new and existing businesses can rely for licensing, financing, and other business processes. Even with the relevant resources in hand, entrepreneurs may not understand what steps they need to take with respect to the uniqueness and nuance of their situation. Knowledgeable counselors who can provide a roadmap and recognize what classes, services from nonprofit economic development organizations, and the like will best benefit a certain business owner are the agents to business success in Berkeley. Additionally, well-informed businesses will likely shorten the timeline of their startup process by reducing the number of application resubmissions.

Another way in which the City of Berkeley can assist in reducing the startup timeline is through conditional use process expeditors who smooth feedback through the bureaucratic process. An expeditor cannot control the speed of which a permit circulates the bureaucratic process, but he or she can anticipate issues that may arise in the process and act proactively to prevent or handle them.

To reduce conflict and miscommunication between departments, Berkeley may consider building a platform similar to that of San Francisco's Excella, which tracks the startup process for individual businesses throughout the Planning and Building Inspection Departments. Excella records each business' name, approved and pending permits, current issues, and which applications are on which city employees' desk. Such a platform provides full transparency and facilitates communication between city departments or individuals.

Small Business Week

One way in which the City of Berkeley can appeal to local prospects and foster the small business community is through a Small Business Week. Small Business Week collaborates with large organizations such as banks, chain stores, consulting and accounting firms, and other named businesses that can provide sponsorship. Small Business Week provides exposition of local businesses and promotes them through print and public relations advertising; assists in their networking with sponsors; and assembles workshops from participating large organizations.

Office of Economic Development Small Business Commission

A commission that uniquely focuses on and supports small business matters. A Small Business Commission is concerned with sustaining local businesses through legislation. The Commission communicates with the Berkeley City Council to take the reins on policy, a side of business issues over which most entrepreneurs have limited knowledge and power. In order to increase compliance with legislation, the Small Business Commission should communicate with business owners through print and other media regarding new legislation implementation that affects businesses.

FINANCE RESOLUTION:

The Office of Economic Development does not receive adequate funds solely dedicated to small business support. Increasing the availability of financing for businesses is possible through the collaboration of departments that are granted funds for projects related to businesses. For example, the Department of Public Works could allocate funds to ADA improvements for storefronts; the Office of Economic Development could utilize community development funds to work with landlords on occupying empty storefronts and implement facade renovations; the Office of Energy and Sustainable Development could aid businesses in reducing energy costs on their fixtures; and the Public Health Division could dedicate funds to keep businesses within health and safety regulations.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

981-7140

Jenny Hsieh, Intern, District 4

981-7140

ATTACHMENTS:

1. Heat Hot Sauce Start Up Process
2. Engineering Permit Application

Heat Hot Sauce Shop - Startup Process
12:30pm

6/25/2013

Lease on storefront started in December

Owner looked online for help from state and city government websites

Owner first went to Zoning, which was straightforward. Next, Owner went to health inspector, who referred him to Plan Check. Plan Check gave the mandatory applications of permits and licenses (not tailored to Owner's specific industry)

Owner went to Berkeley Health Department, which told him he needed a mop sink

Owner hired a plumber from online, who went to the Berkeley Permit Center. Permit Center told him that the required mop sink cannot be put in the bathroom because the bathroom does not abide by ADA requirements

After this, the plumber sent three different proposals to the Permit Center for this issue. Multiple submissions were a result of the Permit Center not telling the plumber and Owner about certain facts, regulations, etc. until after the proposal was submitted and reviewed. Different City of Berkeley officials gave the Owner inconsistent information and advice regarding building plans. Owner realized that he needed to hire a more informed plumber and did so from referral by his landlord. Berkeley, as a government entity, was unable to provide suggestions of plumbers, architects, and contractors to hire.

By the third submission, the Owner was ready to quit. (Note: Owner met a family in Berkeley's Health Department with exact same mop sink issue)

Owner was told that 10% of the money for improvements needed to be spent on ADA functions. One of such plans was denied by the Permit Center under the reason that these ADA improvements needed to enhance the front door area (e.g. automatic door)

By now, it had been over three months (March)

Owner was referred to (by a fellow business owner) and contacted Jesse Arreguin for help, resulting in a meeting with a Plan manager and an architect. Unfortunately, throughout the planning and application process, there was no clear communication. Every time a plan is submitted to the City, a contractor must be present; thus, if a contractor is not available at the intended time of submission, it could not be accepted by the City. This lack of communication slowed down the approval process.

Examples of miscommunication between the Owner and the Permit Center include rejection of a

A1

floor plan on 11inx17in paper, as instructed, on which the actual drawing was not large enough.

Owner's landlord agreed to extend lease for free - otherwise, his business would have folded

After Permit Center approved his building plan, Owner needed final approval from Health Department and Building and Safety before opening. Although the Health Department had already inspected the building, another health inspector had to inspect the building before it became approved. However, the health inspector's supervisor was on vacation, so the Owner had to wait two weeks before this final inspection.

Throughout this process, the Owner had no guidance except by asking friends and colleagues.



PLANNING & DEVELOPMENT

Permit Service Center
2120 Milvia Street, Berkeley, CA 94704
Main Tel: 510.981.7500 TDD: 510 981-6903 Fax: 510 981-7505
Scheduling Inspections: 510 981-7444 Eng. Inspector: 510 981-7440
Email: Planning@ci.berkeley.ca.us

Engineering Permit Application

SHADED AREAS FOR STAFF USE ONLY

APPLICATION

STREET ADDRESS/ UNIT # (if applicable)	TENANT NAME
TOTAL PROJECT SQUARE FEET	VALUATION (\$)

APPLICATION GROUP:

☐ DEMO>DEM

☐ REMODEL>REM

☐ REPAIR>REP

Contractor Name	Phone#
Address	State Lic#
	Bus Lic#
City, ST	ZIP Code

Property Owner Name	Phone#
Address	
City, ST	ZIP Code

Applicant/Contact Person	Phone#
Address	FAX#
City, ST	ZIP Code
Email	

Misc. Comments (Brief Job Description) Attach Dimensioned Site Plan

Fees For Engineering Permit (Mark Quantities) + 5% Technology Fee

Qty	Fee Description	Fee/Units
	Base Permit Fee for each permit type except Const. Park	\$127.00
	Refundable Deposit – As required by Engineering Inspector	\$1,376.00
SEWER, SANITARY		
	*Sidewalk Inspection (up to curb)	\$153.00/hr
	**Trench Inspection (roadway)	\$153.00/hr
CONCRETE AREA		
	Flatwork per 100sf	\$28.00
	Curb Gutter per 10 Lin Ft	\$28.00
CONSTRUCTION PARKING		
	Base Permit Fee	\$34.00
	No Parking Sign	\$12.00
	Time Zone/ Metered Area (weekly)	\$79.00/wk
	Time Zone/ Metered Area (daily)	\$15.75/day
MISCELLANEOUS		
	Miscellaneous Permit Inspection	\$153.00/hr
	Electrical Inspection Fee	\$153.00/hr
SEWER, STORM (Must be lic. sewer contractor)		
	Sidewalk Inspection	\$153.00/hr
	Trench Inspection	\$153.00/hr
	Storm Water BMP	\$153.00/hr
TEMPORARY RIGHT OF WAY USE		
	Monthly Fee	\$221.00/mo
	R/W Inspection Fee	\$153.00/hr
	\$7.50 x _____ Curb LF. x _____ mo.	
	Debris Box/ Moving Containers/PODS (Property Owners ONLY)	\$100.00 ea

* - Must be a Licensed Sewer contractor:
C36 and/or C42 or a General Class A.
** - Must be a Class A contractor

☐ Single Family Residential ☐ Multi-Family Residential ☐ Commercial

NOTE: If this is a fax-in permit, complete the Permit Application Information on the reverse side of this form.

Rev. 08/2010

PERMIT DECLARATIONS for FAX or Mail-In-Only

☐ **LICENSED CONTRACTOR'S DECLARATION AND INFORMATION**

I hereby affirm under penalty of perjury that I am licensed under provision of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ License No. _____

Date _____ Contractor _____

☐ **OWNER BUILDER DECLARATION**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5, Business and Professions Code:

Any city that requires a permit to construct, alter, improve, demolish or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

☐ I as owner of the property, or my employees with wages as their sole compensation, will do () all of or () portions of the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.). **Provide contractor information above.**

☐ I am exempt from licensure under the Contractors' State License Law for the following reason:

NOTE: To obtain permit, the owner-builder must also submit completed Owner-Builder Verification of Information & Limitation of Sale Forms. (Permit Supplement 1) . When executed by a person other than the property owner, owner must also sign the Authorization of Agent to Act on Property Owner's Behalf form prior to issuing of permit. (Permit Supplement 2) .

☐ **AUTHORIZED AGENT DECLARATION**

I hereby affirm under penalty of perjury that I am the authorized agent of: ☐ CONTRACTOR ☐ OWNER

Print Name of Agent _____

Address: _____

Phone No. _____

NOTE: A permit applicant who files a signed document by facsimile transmission (fax) with the City of Berkeley Permit Service Center represents that the original signed document is in his or her possession or control. At any time after filing the document, the City may demand production of the original physically signed document. Notwithstanding any provision of the law to the contrary, the City of Berkeley will treat a signature produced by facsimile transmission as an original.

WORKERS' COMPENSATION DECLARATION (This section need not be completed if the permit valuation is for five hundred dollars (\$500) or less.)

I hereby affirm under penalty of perjury one of the following declarations:

☐ I have and will maintain a certificate of consent to self-insure for workers' compensation, issued by the Director of Industrial Relations as provided for by Section 3700-3800 of the Labor Code, for the performance of the work for which this permit is issued. POLICY NUMBER _____

☐ I have and will maintain workers' compensation insurance, as required by Section 3700-3800 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

CARRIER: _____ POLICY NUMBER _____

EXPIRATION DATE: _____ NAME OF AGENT: _____ PHONE

#: _____

☐ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the worker's compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700-3800 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CITY ORDINANCES DECLARATION (Ordinances available for view on request)

☐ In conformance with the City of Berkeley Noise Ordinance, and/or Use Permit, I understand my obligation to comply and work within prescribed hours.

☐ I am aware of my responsibilities under the Relocation Ordinance.

☐ I certify that I have read and shall use to the maximum extent practicable applicable portions of the *State Storm Water Best Management Practices Manual for Construction*.

CONSTRUCTION LENDING AGENCY DECLARATION

☐ Thereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name: _____

Lender' Address: _____

☐ **BUILDING & SAFETY – Certificate Of Compliance And Authorization Of Entry:** By my signature below, I certify to each of the above and the following: I am the property owner or authorized to act on the property owner's behalf. I have read this application and state that the information given is correct. I agree to comply with all state laws and city and county ordinances relating to building construction and authorize a representative of the City of Berkeley Building and Safety Division to enter upon the property for which I have applied for this permit for the purpose of making inspections.

☐ **ENGINEERING – Certificate Of Indemnification and Compliance:** By my signature below, I hereby agree to indemnify and hold harmless the City of Berkeley and its officers and employees from any and all claims arising from, or out of work, connected with this permit and to perform all work as specified in BMC Title 16 and 17 as amended, and in specifications, detail plans and the Building Codes of the City of Berkeley, and in all special provisions made a part of this permit, whether written or oral, and to the satisfaction of the Director of Public Works. I further agree to comply with all regulations and ordinances of the City of Berkeley.

CONTRACTOR, OWNER, or AUTHORIZED AGENT SIGNATURE (Circle One) I hereby affirm under penalty of perjury that each of the above declarations are true.

SIGNATURE: _____

DATE: _____



10

CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
February 23, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore

Subject: Buy Local Preference

RECOMMENDATION:

Direct the City Manager to explore ways in which to improve our current Buy Local Preference.

BACKGROUND:

The City of Berkeley extends a 5% preference on bids to local business enterprises for supplies, equipment and nonprofessional services from \$100 to \$25,000. Bids received from local vendors are reduced by the applicable percentage before an evaluation is made to determine the lowest responsible bidder. After this determination is made, an award is recommended in the amount shown in the vendor's bid. For example, a local business bidding \$1,000 for a pencil contract to the City would be evaluated as if it had bid \$950. If the bid is awarded to the local business, that business is paid the bid price of \$1,000.

The "Buy Local Preference" policy is designed to focus expenditures from the City to nurture Berkeley based businesses. While we wholeheartedly support this goal the way in which the policy is implemented does not allow for timely data collection on the level of participation or the success of the policy.

In order to ensure the maximum impact of this policy, we request that the implementation include

- A tracking system to determine how many businesses invoke the "Buy Local Preference" and how often such bidders are successful.
- Assessing what commodities/services are being purchased by the City compared to those offered by Berkeley-based businesses.
- "Inreach" to train purchasing staff on the "Buy Local Preference" with the intention of increasing the number of local businesses competing for contracts

It is recommended that the City Manager implement the three recommendations mentioned above (data collection, inreach and outreach efforts and assessing what commodities/services exist locally compared with what commodities/services the city requires) and explore various methods of improving our existing Buy Local Preference policy, including those outlined above, to make the policy more effective and to generate usable data that would allow the City to evaluate how the policy is working.

FINANCIAL IMPLICATIONS:

Although exact data is unavailable the City would capture 1% of any taxable sales made within City borders. There is also a Local Multiplier Effect (LME) that is difficult to determine. The LME depends upon industry and ownership structure of the businesses and can range from 45% to 68%¹ of expenditures being recycled into the local economy supporting local jobs, tax revenue and charitable donations from local businesses.

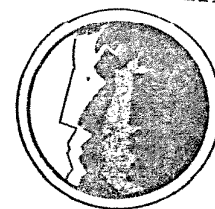
CONTACT PERSON:

Councilmember Darryl Moore, District Two

981-7120

1. Statistics taken from "Economic Impact Analysis: A Case Study Local Merchants vs. Chain Retailers," a case study of bookstores in Austin, Texas by CivicEconomics (<http://www.liveablecity.org/lcfullreport.pdf>) and "The Andersonville Study of Retail Economics," a study comparing the economic impact of ten Andersonville Businesses and their chain competitors by Civic Economics (<http://www.civiceconomics.com/Andersonville/AndersonvilleStudy.pdf>)

City of Berkeley



CITY MANAGER'S OFFICE
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6580

CR 569FOR COUNCIL ACTION

June 7, 1983

To: Honorable Mayor and
Members of the City Council

From: Daniel Boggan, Jr., City Manager *DBJ*

Subject: DEVELOPMENT OF LOCAL BUSINESS PREFERENCE PROGRAM

Introduction

The City Council requested that staff examine the feasibility of extending a monetary bid preference to Berkeley businesses and local minority/female owned businesses when awarding City contracts. The purpose of such a program is to stimulate the local economy and create opportunities for local businesses and local minority and female owned businesses.

This report discusses the possibility of a local bid preference program and makes recommendations on general guidelines for the program's implementation.

RECOMMENDATIONS

It is recommended that the City Council adopt a local businesses preference program for purchases of supplies and nonprofessional services and establish the following general guidelines for the program's implementation:

- a. That the City Manager, in the awarding of purchases from \$100 to \$10,000, extend a 5% monetary preference to a local business, and an additional 5% monetary preference to local minority/female businesses;
- b. That the proposed "local bid preference program" shall refer to a monetary preference to a local business or local minority/female business in an amount equal to 5% or an additional 5% respectively, of the lowest monetary bid, if that low bid has been submitted by a bidder who does not qualify as a local business or local minority/female business;

For example, if the bid of a local business or a local minority/female business, after deduction of the 5% for a local business and an additional 5% for a local minority/female business, is equal to or lower than the low bid, from a firm that is not local, the award shall be made to the local business or the local minority/female business.

- c. That the local bid preference program be applied to supply and nonprofessional services, within the dollar ranges specified in (a) above;

EXHIBIT A

Development of Local Business Preference Program
Page 2

- d. That for the purpose of implementing the local business preference program, location shall be a factor in determining the lowest responsible bidder;
- e. The City Manager shall prepare administrative directives and controls sufficient to carry out the intent of the preference program. Such administrative directives and controls shall be in effect on or before July 1, 1983.

For this program the following definitions will be used:

Local Business: A business firm with fixed offices or distribution points located within the City of Berkeley boundaries and listed in the Permits and License Tax paid file, with a Berkeley business street address;

Local Minority/Female Enterprise: A business of which 51% is owned and controlled by one or more minority/female persons. The minority/female ownership interests must be real and continuing and not created solely to meet minority/female business goals. The minority/female ownership must possess and exercise control over management, and possess an interest in capital earnings commensurate with the claimed minority ownership. The minority/female enterprise must meet the criteria set forth above defining a local business.

Background

Some time ago the City Council requested that staff examine the feasibility of extending a 3% monetary preference to local businesses and an additional 2% monetary preference to local minority/female owned businesses in the award of all contracts. The objective of the local business preference program would be to increase local business participation in meeting City of Berkeley needs for goods and services and to stimulate the local economy in general. The following is a discussion of the precedence for a local preference program, issues to be considered and recommended action to enable such a program to be established in Berkeley should the Council so desire.

Precedent. The concept of a bid preference program for businesses is a recent development and is designed in various forms. As of yet, there appears to be no specific Federal laws or specific legal decision clearly prohibiting such a program. The two programs of which this office is aware are the State of California Preference Program for Small Businesses, and the City of Oakland Preference Program for Local Businesses and Local Minority Businesses.

Several years ago, the State of California enacted the Small Business Procurement and Contract Act (AB 1816). The California State Legislature declared in that Act that:

it serves a public purpose, and is of benefit to the State, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California and it is desirable to improve the economy of the State of California in every possible way. It is also essential that opportunity is provided for full participation in our free enterprise system by small

Development of Local Business Preference Program
Page 3

business enterprises. Further, it is the declared policy of the Legislature that the State should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the State be placed with small business enterprises.

In order to facilitate the participation of small business in State procurement and in construction contracts provision for a small business dollar preference has been made where responsibility and quality are equal. Such preference to small businesses is five percent of the lowest responsible bid, if that low bid has been submitted by a bidder who is not certified as a small business. It should be noted that the State did not provide for consideration of geographical location or minority status, but it did in fact grant a preference to a particular class of business.

The City of Oakland, in March of 1979, adopted a preference program for local businesses. This program granted the City Manager authority to extend a 3 percent preference for a local business and an additional 2 percent preference for a local minority business in the award of all purchase orders. The Purchasing Agent for the City of Oakland has informed us that the program has been successful over the last three years and the Legal Department has advised that there are currently no legal challenges pending.

The City of Oakland in April of 1981 increased the preference point for local businesses to 5% preference for a local business and an additional 5% for a local minority business. The basis for the increase was the fact that initially established point preferences only minimally benefited local businesses in the bidding process.

According to the Oakland Purchasing department, the cost of operating their local preference program has been minimal because local businesses and local minority businesses which have been awarded contracts have usually been the lowest bidders. The City of Oakland spent \$7.35 million dollars for supplies in the 1980-81 fiscal year and the financial cost because of the preference program amounted to only \$1,834.00 in increased expenditures. The financial cost in the 1981-82 fiscal year totaled \$1,819.00 and in the 1982-83 fiscal year \$3,500.00.

It is significant to note that the yearly cost of administering most affirmative action programs far exceeds the roughly \$2,400 annual "cost" of the bid preference program.

It appears given the precedent established by the State of California and the City of Oakland, that the establishment of a Berkeley preference program for local businesses is feasible.

Development of Local Business Preference Program
Page 4

Such a local business preference program could serve to stimulate the local economy thus benefiting the City by 1) facilitating the stabilization of existing businesses, 2) encouraging the development of new businesses within the City, 3) increasing employment opportunities for Berkeley residents, and 4) generating more revenues from the business license fees and sales taxes. Further, by extending the local preference program to local minority and female owned businesses, the City's goal of placing a fair proportion of the purchasing dollars within the reach of minority and female owned businesses would be facilitated.

Most of the City's purchasing dollars presently go to non-minority, male-owned firms who are in the economic mainstream. The most recent analysis of minority and female owned business participation in the City procurement process shows the following:

In the period January 1, 1982 to December, 1982, minority and female-owned businesses received 6% of the purchase orders issued for supplies and non-professional services, and 5% of the dollars. During the period January 1, 1982 to March 31, 1983, minority and female-owned businesses received 9% of the purchase orders for supplies and nonprofessional services and 6% of the dollars. This rate of 6% participation going to minority and female-owned businesses (except for the calendar year 1980 when minority/female owned businesses received 20% of the dollars expended for the purchase of supplies and nonprofessional services) has remained constant since 1976.

The conclusion of this analysis is straightforward: minority and female-owned business participation in the City procurement process for supplies and non-professional services bears no reasonable relationship to the population of the City of Berkeley.

The above participation rate of minority/female owned businesses in the City procurement process is merely a reflection of their underutilized participation within the marketplace of this country. In this country, minority/female owned businesses represent a small fraction (less than 1%) of the businesses and a correspondingly small fraction of the total business activity and receipts (less than 1%) reported, especially in the area of manufacturing and wholesale trade.

This low rate of participation is symptomatic of current and past practice of discrimination within our society.

We believe that the adoption of a local preference program, which also emphasizes local minority and female-owned firms, will further insure the elimination of discriminatory practices in the market place and the removal of barriers which have historically deprived certain groups of equal business opportunities.

Development of Local Business Preference Program
Page 5

Scope of Local Business Preference Programs

Following is a discussion of essential issues listed to be considered in establishing a local preference program such as: 1) the requirement of the Charter Section 67, which states in pertinent part that "contracts shall be let to the lowest responsible bidder." and 2) the type and amount of purchases to be considered.

Charter

In response to the first issue, Section 67(a) of the Berkeley Charter and Ordinance No. 4992-N.S. requires that purchases in excess of \$10,000 for specific improvements and purchases of supplies, equipment or materials "shall be let to the lowest responsible bidder." The City's administrative practices for purchases under \$10,000 also requires that purchases be awarded "to the lowest responsible bidder." Although the Charter, applicable ordinance and purchasing manual require purchases to be awarded to the "lowest responsible bidder," there is no clear definition of this term. The following criteria are generally used to determine the "lowest responsible bidder": Dollar amount of bid; quality of performance; ability and skills of bidder; speed with which job can be finished; reputation; ability to provide future maintenance; and fulfillment of affirmative action goals. The term "lowest responsible bidder" should be expanded to include the location of the business. The purpose of expanding the definition to include consideration of location is to enable the City to give a preference to local businesses with the goal of:

- 1) stimulating the local economy (by stabilizing and encouraging the development of new businesses within the City);
- 2) increasing employment opportunities for residents of Berkeley;
- 3) receiving additional monies from business license fees which are calculated based on gross sales;
- 4) increase sales tax; and
- 5) to stimulate minority and female owned business participation in the market place.

Type and Amount of Purchase

In the request to examine the feasibility of establishing a preference, the City Council did not specify the type of contract (construction, services, or supplies) to which a monetary bid preference should be extended.

However, in analyzing the various types of City supplies, it is our opinion that a bid preference is best suited for 1) supplies and nonprofessional service purchases, and 2) purchases that do not exceed \$10,000. The rationale for this is as follows:

Development of Local Business Preference Program
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In order to reduce the cost arising from a bid preference program, the program should be limited to purchases which do not exceed \$10,000. Most of the purchase orders issued for supplies and nonprofessional services are under \$10,000. For example, in fiscal year 1980, 1981 and 1982, only 1.1% of all purchase orders for commodities exceeded \$10,000. Therefore, 98.9% of all purchase orders issued are for purchases under \$10,000 and would be eligible for the preference program. Further the higher the value of the purchase, the more the City must pay when awarding a contract to other than the lowest bidder. (Note: The Oakland preference program is for purchases of supplies under \$15,000.)

Another consideration is that purchases involving contracts over \$10,000 (according to the Charter) are subject to a formal bidding process for award to the lowest responsible bidder while supply and nonprofessional purchases worth \$10,000 or less are normally subject to an informal bidding process. Thus, purchases for \$10,000 or less procedurally provide greater flexibility than purchases in excess of this amount for the purpose of implementing the proposed preference program.

The preference program should not include construction contracts and professional service contracts because the dollar value is generally well in excess of \$10,000. Further, the exclusion of construction contracts and professional service contracts from the preference program does not prevent affirmative action goals from being met because the City requires businesses contracting with the City to contract 40% of their subcontract dollars with minority/female firms.

CONCLUSION

Staff believes that the Council's interest in establishing a local preference program is feasible. We believe that a local preference program can serve a public purpose in generally improving the Berkeley economy and insuring fair and equal access to the City's procurement process.

In order to implement such a program, it is recommended that Council approve the general guidelines contained in the recommendation section of this report.

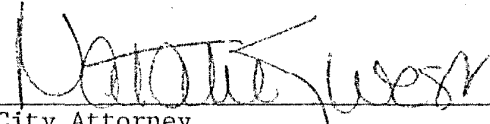
RESOLUTION NO. 51,813 -N.S.

ADOPTING A LOCAL BUSINESS PREFERENCE PROGRAM FOR PURCHASES OF SUPPLIES AND NON-PROFESSIONAL SERVICES.

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

That the Local Business Preference Program for Purchases of Supplies and Non-Professional Services, as set forth in City Manager Report dated June 7, 1983 entitled "DEVELOPMENT OF LOCAL BUSINESS PREFERENCE PROGRAM," attached hereto as Exhibit A and made a part hereof, is hereby adopted, provided that the definition of eligibles for the Preference Program shall be expanded beyond local minority/female businesses to include disabled.

Approved as to form:



City Attorney

Copies sent 6/28/83

To:

RESOLUTION

No. 51,813 N.S.

Dated June 7, 1983

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Bach, Feller, Fukson, Hester, Lashley, Sweeney, Washburn

Nocs: None

Abstaining: None

Absent: Councilmembers Denton, President Newport

EUGENE "GUS" NEWPORT
Mayor and President of the Council

Attest EDYTHE CAMPBELL
City Clerk and Clerk of the Council

2020 LRDP LITIGATION SETTLEMENT AGREEMENT

THIS 2020 LRDP LITIGATION SETTLEMENT AGREEMENT ("Agreement"), dated May 25th 2005, is made by and among THE UNIVERSITY OF CALIFORNIA, BERKELEY and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation (collectively, the "University") and the CITY OF BERKELEY, an entity corporate and politic (the "City").

RECITALS

- A. WHEREAS, the University has approved the 2020 Long Range Development Plan for the University of California, Berkeley (the "2020 LRDP") and in conjunction therewith, has also prepared and certified an Environmental Impact Report (the "2020 LRDP EIR").
- B. WHEREAS, the City has filed a petition and complaint challenging the validity of the 2020 LRDP EIR (Alameda County Superior Court Case No. 05199505).
- C. WHEREAS, the University and the City desire to settle the dispute between them with respect to the 2020 LRDP and 2020 LRDP EIR on the terms set forth herein and based upon the Statement of Principles below.

I. STATEMENT OF PRINCIPLES.

- A. WHEREAS, the City of Berkeley and UC Berkeley have successfully completed two previous joint planning documents, the 2001

Transportation Demand Management Study and the 2003 Draft Southside Plan, with broad citizen participation and community engagement; and

- B. WHEREAS, the City of Berkeley seeks to establish the downtown as a compact, economically vital historic city center with a defined core area and transition zones for buffering residential neighborhoods; and
- C. WHEREAS, UC Berkeley is an urban campus located partly within the geographical boundaries of the City of Berkeley; and
- D. WHEREAS, the City Environs are as much a part of the Berkeley experience as the campus itself, and the quality of city life is a large part of what makes UC Berkeley a unique and desirable place to learn, work, and live; and
- E. WHEREAS, the City of Berkeley and UC Berkeley seek to respect the unique social and cultural character of the Downtown, create an appealing, safe and pedestrian-oriented Downtown environment and revitalize the Downtown economy; and,
- F. WHEREAS, downtown Berkeley's superior transit access and its established mixed-use character make it a desirable location for those future University investments in new research, cultural, and service functions which require locations near, but not on, the Campus Park; and

- G. WHEREAS, the City of Berkeley in its General Plan seeks to prioritize transit-oriented development to promote increased public transit usage and bicycle and pedestrian access as one of the most effective tools to reduce traffic congestion and improve community health and the environment; and
- H. WHEREAS, the City of Berkeley strongly supports alternative transit that serves UC Berkeley staff, faculty and students; and
- I. WHEREAS, the parties acknowledge the importance to the City of maintaining properties on the City's tax rolls, and UC Berkeley in its 2020 Long Range Development Plan proposes that University-owned land will always be the first option explored by the University for both new program space and parking; and
- J. WHEREAS, the University wishes to plan future investments not merely to meet the program needs of the University, but also to enhance the image, experiential quality, and economic and cultural vitality of downtown Berkeley, by joining with the City of Berkeley in preparing a Berkeley Downtown Area Plan; and
- K. WHEREAS, the City of Berkeley and UC Berkeley share a vision for a cooperatively planned Downtown Berkeley that includes the following elements:

Sustainability: promoting a sustainable downtown that serves as a model of urban stewardship and the wise use of resources, and relieves development pressures on residential neighborhoods;

Livability: enhancing the image and experience of the downtown, preserving its unique cultural and social character and its comfortable pedestrian orientation; and

Vitality: strengthening the downtown as a vital city center offering employment, housing, cultural and recreational opportunities for Berkeley residents.

L. WHEREAS, the City and University agree this vision and plan shall be comprehensive, and shall encompass the entire scope of future downtown development, including all private and public sector landowners and developers; and

M. WHEREAS, the City and the University agree that, while maintaining its autonomy as a state institution, the University will use the new Downtown Area Plan as its guide for the location and design of new projects within the downtown.

Therefore, the University and City of Berkeley agree as follows:

II. JOINT PLANNING FOR THE DOWNTOWN AREA (DEVELOPMENT OF A DOWNTOWN AREA PLAN (DAP)).

UC Berkeley will participate in a joint City of Berkeley/UC Berkeley planning process for the Downtown Area of Berkeley, defined as the area bounded by Hearst, Oxford, Dwight and Martin Luther King, Jr. Way.

A. Conditions.

1. Staffing for preparation of the DAP and EIR shall include at least one FTE dedicated City planner and one FTE dedicated UC Berkeley planner; see part II.B below for other process management conditions. The DAP will establish development envelopes and design guidelines by area or subarea, not site-by-site, and not just for UC Berkeley development sites. UC owned sites will be considered using the same set of criteria as non-UC sites.
2. Design guidelines should be developed by area or subarea, not by site. The University will develop project specific design guidelines that are, to the full extent feasible, consistent with the DAP design guidelines for each major UC Berkeley project, in accordance with the project approval process as specified in the 2020 LRDP.
3. UC Berkeley and the City will work together to identify opportunities for mixed-use projects and public/private

partnerships on land not currently under UC control, within the Downtown Area or elsewhere in the City.

4. UC Berkeley will explore with the City development of public-private research facilities within the City. However, the City acknowledges that the proximity of academic programs on and adjacent to the Campus Park is a fundamental objective of the UC Berkeley academic strategy and 2020 LRDP.
5. Following certification of the EIR and adoption of the DAP, UC Berkeley would use it as a guide for the location of projects implemented under the 2020 LRDP in the area of the DAP, and would use the design guidelines and standards prescribed in the DAP as a guide to the design of such projects, as stated in part II.A.2 above. UC Berkeley will continue to use the 2020 LRDP and 2020 LRDP EIR. The DAP EIR will not supersede the 2020 LRDP EIR, but rather augment it.
6. Because both parties recognize that UC Berkeley may need to move forward with some 2020 LRDP projects during preparation of the DAP and DAP EIR, within 90 days from the date of this Agreement, UC Berkeley shall provide to the City a list of University- and State-owned properties within the DAP area that it considers to have potential for future University development or

redevelopment during this period, and the most likely use or mix of uses those future projects might accommodate. The City acknowledges, however, that this list will not be exclusive or limit UC Berkeley's ability to go forward with other projects under the 2020 LRDP, because as a dynamic research university, its current needs may change and new unanticipated needs may emerge.

B. DAP/EIR Process.

1. The City will act as the Lead Agency under CEQA for preparation of the Downtown Area Plan (the "DAP") and DAP EIR. The Regents will reserve their autonomy from local land use regulation.
2. The City will certify the EIR and adopt the DAP within 48 months of executing the Settlement Agreement; however the City Manager and Chancellor may agree to extensions of this deadline without further approval by The Regents or the City Council.
3. There shall be a staff level DAP joint preparation committee that includes UC Berkeley planners. The City and UC Berkeley staff will meet and establish "milestones" for the planning process to ensure orderly and timely completion of the Plan and EIR within this 48 month period. The parties may agree on incentives and/or

disincentives beyond those specified herein to ensure that the process is completed in a timely and effective manner.

- (a) If the goal of completion within 48 months is not met as a result of City action or inaction not caused by UC Berkeley's failure to perform under this Agreement, then UC Berkeley's annual payment to the City will be reduced by \$180,000 each year, or \$15,000 per month of delay, until certification of the EIR and adoption of the Plan. This reduction in annual payment, if it occurs, may not be drawn from the TDM or Neighborhood funds (see part III.B, below).
- (b) UC Berkeley retains the right to tier from the 2020 LRDP EIR as provided in part II.A.5 and II.A.6 above.

- 4. Dispute Resolution: The City's planning director and the campus' planning director will be fully authorized to make process decisions jointly. If the City planning director and campus planning director cannot resolve a dispute, it will be referred to the City Manager and UC Vice Chancellor for Facilities Services for resolution. If they cannot resolve the dispute, it will be referred to the Mayor and the Chancellor. If they cannot resolve the dispute, the parties would equally share the costs of the outside mediation.

5. All public meetings regarding the DAP and EIR, excluding any public hearing process before City commissions and the City Council, must be jointly planned and sponsored by the City and UC Berkeley. All DAP and EIR meetings before all City commissions and the City Council will be coordinated with UC Berkeley.

6. Joint review of DAP and EIR: because the DAP is a Joint Plan, there shall be no release of draft or final DAP or EIR without concurrence by both parties. Concurrence may be withheld in the case of a good faith disagreement regarding land use planning or CEQA issues. Any mitigation measures included in the EIR must be acceptable to UC Berkeley and applicable to all projects in the Downtown Area, regardless of ownership or sponsorship. Each party reserves the right to determine the feasibility of mitigation measures proposed in the DAP EIR and to discuss such feasibility in the DAP EIR, other environmental documents or findings.

7. UC Berkeley reserves the right to determine if the DAP or EIR meets the Regents' needs. The basis for making such a determination would be that the DAP or EIR does not accommodate UC Berkeley development in a manner satisfactory to the Regents.

8. If the DAP EIR is challenged in court, the University may tier solely from its 2020 LRDP EIR unless and until the DAP EIR is upheld.
The University will not be required to defend the DAP EIR in court.

C. Costs.

1. UC Berkeley will pay 50% of the City's cost of preparing the DAP EIR, up to a maximum amount of \$250,000.00.
2. The City will employ a minimum of one FTE land use planner for four (4) years. The City may choose to fund such planning salary(ies) out of the campus' annual payment to the City, however the funds allocated for TDM and the Neighborhood programs as described in part III.B may not be reduced.
3. In addition, up to \$250,000 of the City's share of the cost of the DAP EIR may be funded out of UC's annual contribution to the City, provided that the funds allocated for TDM and the Neighborhood programs as described in part III.B may not be reduced.
4. UC Berkeley supports the concept of developing a financing plan for infrastructure improvements, transit and neighborhood development in the Downtown Area, provided such a plan applies to all private and public property owners and all developers in the Downtown Area and that any financial contributions by UC

Berkeley to such a plan do not increase UC Berkeley's \$1.2 million annual contribution to the City, as described in part III.B, below.

III. FISCAL CONSIDERATIONS.

A. Beginning July 31, 2006, UC Berkeley agrees to make an annual allocation of \$1.2 million to the City for the term of the 2020 LRDP, to be disbursed and used as indicated in part III.B below. This annual contribution will be increased annually by 3%.

1. This annual contribution to the City is intended to be all encompassing. The campus will not agree to any extra allocations other than the campus' commitment to pay 50% of the cost of preparing the DAP EIR, up to a maximum of \$250,000.00.
2. Allocations under this part III.A are not intended to eliminate ongoing fees for services paid to the City by UC Berkeley as of the date of this Agreement, but not addressed by this Agreement. In addition, the allocation does not include the costs of mitigation measures that are required in any certified EIR and that The Regents determine are feasible to implement.

B. The sums in categories 1 and 2 below would be transferred to the City no later than July 31st of each year. The sum in category 3 below would be deposited on an annual basis into a separate account administered jointly

by the Vice Chancellor, Facilities Services and the City Manager. The sum in category 4 below would be deposited on an annual basis into a separate UC Berkeley account and an annual balance will be provided to the City. Funds in all accounts may accumulate from year to year to underwrite a pre-identified major capital purchase or project.

1. \$200,000 annually
Sewer and storm drain infrastructure projects, including replacement and rehabilitation of existing sewer and storm drain lines.
2. \$600,000 annually
Fire and emergency equipment, capital improvements, and training, including maintenance and repair of equipment and capital improvements.
3. \$200,000 annually
Joint UC/COB Transportation Demand Management and pedestrian improvement programs, studies, and projects, including, but not limited to, new or improved signage, which allocation does not require the City to provide matching funds.
4. \$200,000 annually
Fund projects that benefit City neighborhoods. Project proposals would be solicited from community and neighborhood groups and reviewed by a Chancellor's advisory committee comprised of selected UC Berkeley staff, community members, and City representatives. Funding will be disbursed at the Chancellor's discretion and may be used to leverage additional funding from private and public resources. Projects funded through this account would not be located on the Campus Park.

The foregoing notwithstanding, the University will transfer the sum of \$150,000 to the City no later than June 30, 2005, so that the City can employ the FTE land use planner described in Section II.C.2 above. This amount will be deducted from the amount to be transferred by the University to the City on July 31, 2009, pursuant to Sections III.B.1 or 2.

- C. No later than the first business day following July 1st of each year the City shall provide UC a full accounting of its use of category 1 and 2 funds. If UC determines that any amount of these funds has been spent in a manner inconsistent with this part it may withhold that amount from the sums deposited the following July 31st, provided that it concurrently provides a written explanation for its determination. The parties shall then seek to resolve their disagreement.
- D. The parties acknowledge that if changes in state law modify the monetary legal obligations of UC the parties shall renegotiate this Agreement with the purpose of maintaining the same total amount of allocations, inclusive of any new obligation.

IV. PARKING.

- A. UC Berkeley agrees to construct no more than 2,060 total new parking spaces by 2015, consisting of 1,270 net new parking spaces and 790 un-built spaces previously approved for development (including 690 at

Underhill) without preparing a project specific EIR (even as to any such excess parking spaces located in the DAP area), provided that the City approves a route for Rapid Bus on Telegraph Avenue by 2010 and considers a route for a dedicated lane BRT on Telegraph Avenue.

- B. As part of the DAP and DAP EIR, UC Berkeley and the City will explore and consider alternative transit opportunities in addition to the AC Transit Rapid Bus and Bus Rapid Transit.
- C. When building new parking in the Downtown Area, UC Berkeley will attempt to prioritize locations that maximize shared public and campus use and will consider public/private partnerships to develop new parking structures. As part of the DAP, the City and University will seek to maximize the integration of any UC parking into the overall supply of parking in the downtown area and encourage its use by the public at off-peak times when not required for University needs with appropriate pricing and signage.

V. ADDITIONAL JOINT INITIATIVES.

- A. Prior to any announcement by the parties concerning this Agreement, the City and UC Berkeley will mutually agree upon and prepare a joint press release and hold a joint press conference announcing settlement of the litigation.

- B. The City of Berkeley currently receives the entirety of the local use tax paid by UC Berkeley, a benefit of \$324,000 over the past four fiscal quarters (as of March 31, 2005). UC Berkeley supports in concept a Use Tax "pilot program" to enable a greater share of use taxes to be accrued to the City of Berkeley. The City would assist UC Berkeley to set up an administrative process to implement the program. If determined feasible by the University, in conjunction with the Board of Equalization, such program would be implemented as soon as possible, but in no event later than July 1, 2006. The University will make diligent, reasonable and good faith efforts to determine the feasibility of such a program.

The campus agrees to participate in the following Additional Joint Initiatives to the extent permissible under existing law and UC practices.

- C. Work with the City on a First Source hiring program to the extent feasible for all new construction and non-construction jobs modeled on the City's existing First Source Hiring Program, such as enabling the City to provide information to University contractors.
- D. Develop and implement within a reasonable time a local-purchasing program for prioritizing the purchase of goods and services in Berkeley, to the extent feasible.

- E. Work together to publicize and support , and implement, the Berkeley Champions for Kids Workplace (voluntary) Giving Payroll Deduction Program for UC Berkeley Faculty and employees.
- F. Explore establishing a UC Berkeley Employee Volunteer Release Time program similar to the City's to have volunteers work with at risk young people in the City.
- G. Explore with the City opportunities to encourage private spin-off businesses that might result from UC-related research to locate in Berkeley.

VI. OTHER CONSIDERATIONS.

- A. The City agrees to promptly dismiss its lawsuit challenging the 2020 LRDP EIR with prejudice, not contingent upon an agreement "for the duration of the 2020 LRDP." The parties will be responsible for paying their own attorneys' fees and costs.
- B. The City agrees not to seek to impose parking taxes on the University during the course of the 2020 LRDP as long as the total of fiscal considerations under part III are not reduced.
- C. The City agrees not to pursue new or additional sewer fees or litigation to impose such new or additional fees on the University during the course of

the 2020 LRDP as long as the total of fiscal considerations under part III are not reduced. City will promptly pass a resolution and take any other legal steps necessary to exempt UC Berkeley from the imposition of the sewer fees adopted by the City Council on April 26, 2005.

- D. The City agrees not to pursue any legal challenges to the approval or construction of the Southeast Quadrant Academic Commons, provided it is consistent with the 2020 LRDP and 2020 LRDP EIR, or to fund or encourage by official action other organizations to do so. Nothing in this paragraph shall be construed to apply to Memorial Stadium.
- E. The City agrees not to pursue, any challenges to any LRDP projects on the Campus Park, provided they are consistent with the 2020 LRDP and 2020 LRDP EIR or to fund or encourage by official action other organizations to do so.

If A, B, or C above is violated, this Agreement shall immediately terminate. If D or E above is violated, UC Berkeley legal fees incurred in defending any such lawsuits will be deducted from the annual contributions to the City for sewer and storm drain infrastructure and fire and emergency services.

VII. MISCELLANEOUS.

- A. This Agreement shall become effective upon execution of the undersigned. This Agreement shall terminate at the conclusion of the

2020-2021 academic year or at such earlier date set forth in Section VI above.

- B. Time shall be of the essence in the performance and/or satisfaction of this Agreement and/or each individual term, promise, provision, obligation, sentence, clause or paragraph thereof.
- C. The parties intend and agree that this Agreement, and each and every provision thereof, shall be binding and enforceable upon the parties according to the terms and provisions specified herein.
- D. This written Agreement constitutes the entire Agreement between the parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the parties shall be enforceable only as set forth in any other applicable written agreement.
- E. After consultation with the undersigned counsel, each party to this Agreement represents and warrants that it authorized and has the capacity to enter into this Agreement, and that each signatory to this Agreement on its behalf is authorized and has the capacity to sign this Agreement on its behalf.
- F. Except to the extent other remedies for default under this Agreement are otherwise specified herein, the parties' obligations under this Agreement shall be specifically enforceable, and any non-defaulting party may bring

an action for specific performance or any other appropriate relief in the Superior Court. This Agreement is not intended, nor shall it, create any right or remedy in any third party.

[The rest of this page has been intentionally left blank, followed by a signature page.]

Dated: May 25, 2005

CITY OF BERKELEY




TOM BATES
Mayor



PHIL KAMLARZ
City Manager

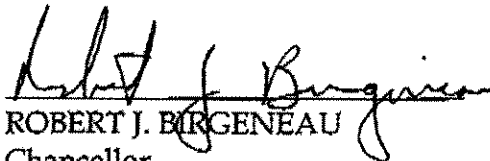
Approved as to form:
CITY ATTORNEY



MANUELA ALBUQUERQUE
City Attorney

Dated: May 25, 2005

UNIVERSITY OF CALIFORNIA,
BERKELEY



ROBERT J. BIRGENEAU
Chancellor

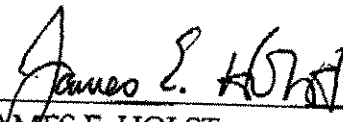


EDWARD J. DENTON
Vice Chancellor-Facilities Services

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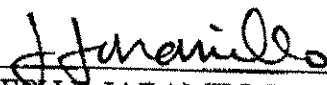
Dated: May 25, 2005

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA



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General Counsel

Approved as to form:
GENERAL COUNSEL OF THE
REGENTS OF THE UNIVERSITY OF
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OF THE UNIVERSITY OF CALIFORNIA



Office of the City Manager

CONSENT CALENDAR
May 15, 2018

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 that 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,"¹ 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."² 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 compiled its findings in a worksession report and presentation to council on January 16, 2018³. 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.

¹ See *City of Berkeley 2018-2019 Strategic Plan*, adopted by Berkeley City Council, January 16, 2018. https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_02_Proposed_Strategic_Plan.aspx

² See *Small Business Support Package*, adopted by Berkeley City Council, April 25, 2017. https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-25_Item_41_Small_Business.aspx

³ See *Economic Development Worksession, Small Business Support*. https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx

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

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 2016.⁵ 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

⁵ See: Berkeley City Council, Consent Calendar, [Commercial Recreation Center Uses in the Downtown Mixed Use Zoning District \(C-DMU\); Amending BMC Chapters 23E.68 and 23F.04](#), March 15, 2016.

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.

CONTACT PERSON

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Attachments:

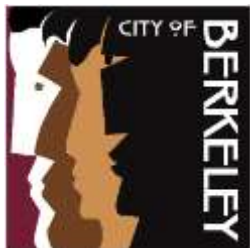
- 1: Performance standards for beer and wine service incidental to food service (DRAFT)

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 Alcoholic 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.

Performance Standards for Beer and Wine Service Incidental to Food Service

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.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: October 3, 2018

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments Supporting Small Businesses

SUMMARY

On June 20, 2018 and July 18, 2018, the Planning Commission considered a set of six City Council recommendations for Zoning Ordinance modifications that support Berkeley's small businesses. On July 18th, the Commission requested that a Public Hearing be set on October 3, 2018 to decide final direction on draft Zoning Ordinance amendments.

The list of amendments under consideration can be found in the September 21, 2018 Public Hearing Notice (*see Attachment 1*). Full red-lined text of draft Zoning Ordinance amendments is provided as *Attachment 2*. This report provides information requested by Commission, a summary of draft amendments, and questions for the Commission to consider. Direction given by the Planning Commission will provide information needed to finalize Zoning Ordinance amendments, which will be forwarded to City Council.

BACKGROUND

In April 2017, City Council referred to the City Manager development of programs and policies to support Berkeley's small businesses. The referral specifically called for streamlined zoning and permitting. Over the course of two meetings, Planning Commission considered recommendations, gave direction and asked staff to draft Zoning Ordinance amendments to be discussed at a Public Hearing. The Planning Commission also requested staff provide additional information on the following three subjects:

Parking Standards

Many cities' parking standards are based on the *Parking Generation Manual* published by the Institute of Transportation Engineers (ITE). Berkeley developed parking standards using this source in 1999 and landed on a base parking requirement of 1 space per 500 square feet (1:500) for most commercial uses and 1 space per 300 square feet (1:300) for Quick Service and Full Service Restaurants. The thought at the time was that restaurants generated more trips than generalized commercial businesses and therefore needed additional parking.

Over the last 20 years, climate awareness and improved public transportation options and experiences (e.g. real time arrival tracking etc.) have changed the way people travel. In recent years, adoption of bike-, car-, and ride-sharing has contributed to mode-shifts and reduced

parking needs. Reduction in parking requirements may also be justified in walkable districts where patrons “park once and walk” to multiple destinations.

In trying to weigh the benefits of 1:500 versus 1:300 (as required with Recommendation 2), staff looked to neighboring cities, but found this approach problematic. Similar to Berkeley, most jurisdictions used earlier versions of ITE’s *Parking Generation Manual* or followed other neighboring jurisdiction’s standards. These comparisons created circular logic and did not illustrate any obvious best practices.

Levels of Discretion

The City of Berkeley has two types of Use Permits: Administrative Use Permits (AUPs) and Use Permits with a Public Hearing (UP(PH)s). AUPs and UP(PH)s are required (as designed in the Zoning Ordinance) for land uses that have the potential for negative impacts on surrounding neighborhoods. Permits can be approved if use is consistent with the purposes of the district and not detrimental to the neighborhood.

Both AUPs and UP(PH)s require noticing of neighbors, allow for public comment, and can be appealed. AUPs are reviewed and approved by staff. If an AUP is appealed, it goes to ZAB. ZAB’s decision on an AUP can be appealed to City Council. UP(PH)s are reviewed by the Zoning Adjustments Board and require a Public Hearing. ZAB’s decision can be appealed to City Council. AUPs can take approximately 2-8 months for approval. A UP(PH) can take between 6-24 months. An AUP can cost between \$1800 and \$3,300. A UP(PH) can cost between \$5,200 and \$7,000.

Permit Thresholds

Recommendations 2 and 5 require Planning Commission to evaluate permit thresholds¹ for certain commercial uses in select districts. Specifically, 1) condensing food service categories requires permit threshold modifications in C-DMU and C-E; and 2) modifying level of discretion for Commercial Recreation Centers (CRCs) from UP(PH) to Zoning Certificate (ZC) and AUP requires establishing new permitting thresholds.

The July 18, 2018 Staff Report (*see Attachment 3*) provides a table of average sizes of commercial spaces by district. This analysis (based on available information) showed that commercial spaces in Neighborhood Commercial districts ranged between 1,237 -- 1,520 square feet and commercial spaces in Avenue Commercial districts ranged between 1,472 – 3,577 square feet.

At the July 18, 2018 meeting, the Commission recommended applying C-DMU’s CRC permit thresholds to Avenue Commercial districts. The Commission was considering 3,000 to 5,000 square feet for the AUP-UP(PH) threshold for Neighborhood Commercial districts. Table 1 (below) provides examples of commercial spaces in Neighborhood Commercial districts that fall into this size range. This information is provided for illustrative purposes only and is meant to help visualize storefront sizes.

Table 1: Selected Commercial Spaces between 3000 and 5000 Square Feet

Zoning District	Property Address	Square Feet	Current Tenant (Q2 2018)
C-E	2887 College	3,231	Elmwood Laundry
C-E	2635 Ashby	3461	Donato & Co.
C-E	2959 College	3500	Wells Fargo Bank
C-NS	2100 Vine	3,306	Earthly Goods
C-NS	1475 Shattuck	3,350	Saul's Deli & Restaurant
C-NS	1491 Shattuck	4,918	Books Inc

¹ Permit thresholds are referred to throughout this report as the size in square feet that triggers a change in permit type (and level of discretion).

C-SA	2974 Sacramento	3,290	Sacramento Market
C-SA	3192 Adeline	3130	Firehouse Art Collective
C-SA	3250 Adeline	3,477	The Vault Cafe
C-SA	3215 Adeline	3,577	Washington Coin Wash
C-SO	1870 Solano (upper floor)	3,075	Old Republic Title Company
C-SO	1744 Solano	3,348	Pharmaca
C-SO	889 Ensenada Ave	3,500	Happy Hour Fitness

DISCUSSION

The Discussion section presents each of the six Recommendations in the context of:

- Existing Regulations
- Proposed Amendments (excerpts of code – see *Attachment 2* for full text)
- Reasoning
- Questions for Planning Commission

1. **Remove Requirement to Provide Incremental Change in Parking Spaces Associated with a Change of Use in the Commercial Districts**

Existing Regulations: The Zoning Ordinance currently requires new businesses to provide additional parking (“the incremental change in parking”) if a proposed use has a higher parking requirement than a previous use. This change is triggered solely by use and does not involve an increase in size of commercial space.

Proposed Amendments:

- In Chapter 23E.28 (Off-Street Parking and Transportation Services Fee), modify Section 23E.28.130 (Parking Requirements for Change of Use and Expansions of Buildings in the C, M, MM, MU and R-SMU Districts) to explicitly list districts requiring the incremental change in parking (i.e. M, MM, MU and R-SMU), thereby exempting C-districts. The following red-lined code excerpt from 23E.28.130 is provided as an example:
 - A. No change of use shall be required to meet the off-street parking requirements of either the district or this chapter unless 1) the structure has been expanded to include new floor are or 2) in the M, MM, MU and R-SMU Districts, the use is changed to one with a higher numerical parking standard than the district minimum.
- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.48 (C-NS), 23E.52 (C-SA), 23E.60 (C-SO) and 23E.64 (C-W), modify Section 23E.XX.080.B (Parking – Number of Spaces) to remove “or change of use.” The following red-lined code excerpt from 23E.36.080 is provided as an example:
 - B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.36.080 shall meet the requirements listed or the district minimum, whichever is more restrictive, for newly constructed floor area ~~or changes of use.~~

Reasoning: Finding additional off-street parking for existing commercial spaces is difficult and can require a parking waiver. Parking waivers are expensive and involve an AUP – adding time and money to the permitting process for businesses wanting to locate in existing commercial spaces. Removing the requirement for incremental parking associated with

change of use has the potential to reduce vacancies by making existing commercial spaces more attractive to small businesses.

QUESTION FOR PLANNING COMMISSION: *Do the proposed draft amendments for Recommendation 1 reflect Planning Commission goals? If no, provide additional direction.*

2. Condense Existing Food Service Categories (Carry Out, Quick Service, and Full Service) into a Single Category (Food Service Establishment)

Existing Regulations: The Zoning Ordinance currently splits food service into three categories: Carry Out Food Stores, Quick Service Restaurants or Full Service Restaurants. Parking standards, levels of discretion, permitting thresholds, and findings differ by category and by commercial district. See Attachment 3, Table 2 (Food Service Establishment Regulations) for a summary current regulations.

Proposed Amendments:

Note that collapsing food Service Categories creates four discrepancies in level of discretion that need to be addressed. Amendments resolve these issues as follows:

1. Reduce level of discretion in C-T for Quick Service Restaurants from UP(PH) to AUP if commercial space is greater than 1,500 square feet.
 2. Reduce level of discretion in C-W for Quick Service Restaurants from UP(PH) to AUP if commercial space is greater than 1,500 square feet.
 3. Reduce level of discretion in the C-W for Full Service Restaurants from UP(PH) to AUP if commercial space is over 2,500 square feet.
 4. Decrease the permit threshold that triggers an AUP in the C-DMU for Quick Service Restaurants and Carry Out Food Stores from 2,000 square feet to 4,000 square feet.
- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), 23E.56 (C-T), 23E.60 (C-SO), 23E.64 (C-W), and 23E.68 (C-DMU), modify Section 23E.XX.030.A (Uses Permitted Table) to 1) replace three existing food service categories with “food service establishment”; 2) add corresponding levels of discretion; and 3) delete references to parking standards in 23E.XX.080. See red-lined excerpt from 23E.40.030.A as an example:

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Food Service Establishments		
Carry Out Food Service Stores	AUP**	
Under 1,000 s.f.	ZC	
<u>Over 1,000 s.f.</u>	<u>AUP**</u>	
Quick Service Restaurants	AUP**	Subject to additional parking requirements under Section <u>23E.40.080-B</u>
<u>Under 1,000 s.f.</u>	<u>ZC</u>	

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Full Service Restaurants	AUP**	
Under 1,000 s.f.	ZC	

- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), 23E.56 (C-T), 23E.60 (C-SO), 23E.64 (C-W), and 23E.68 (C-DMU), modify Section 23E.XX.030.A (Uses Permitted Table) to replace “incidental to food service at quick and full service restaurants” with “incidental to seated food service”. Exact text may vary slightly, but will be similar to red-lined excerpt from 23E.40.030.A shown below:

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only

- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), 23E.60 (C-SO), 23E.64 (C-W), and 23E.68 (C-DMU), modify Section 23E.XX.030.A (Uses Permitted Table) to delete references to “Quick and Full Service Restaurants” associated with Outdoor Café Seating. See red-lined excerpt from Table 23E.40.030.A as example:

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Outdoor Cafe Seating When seating not abutting R-District	 ZC	Quick and Full Service Restaurants only

Note that collapsing food Service Categories creates a discrepancy with respect to parking requirements for Food Service Categories. Amendments resolve this issue by reducing parking requirements from 1:300 to 1:500 for Quick Service and Full Service Restaurants in the Commercial districts.

- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.48 (C-NS), 23E.52 (C-SA), 23E.60 (C-SO), and 23E.64 (C-W), modify Section 23E.XX.080.B (Parking – Number of Spaces Table or

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Off-Street Parking and Loading Requirements Table) to delete “Quick or Full Service Restaurants” row. See red-lined excerpt from Table 23E.40.080 as an example:

Table 23E.40.080	
Parking Required	
Use	Number of spaces
Hospitals	One per each four beds plus one per each three employees
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Medical Practitioner Offices	One per 300 sq. ft. of floor area
Quick or Full Service Restaurants	One per 300 sq. ft. of floor area
Residential Uses, Nursing Homes	Refer to R-3 Standards, Section 23D.36.080

Note that collapsing food Service Categories creates a discrepancy with respect to 1,000 square foot limit that currently applies to Carry Out Food Stores and Quick Service Restaurants in C-E. Amendments resolve this issue as by removing the size limitation.

- In Chapters 23E.44 (C-E), modify Section 23E.44.040 (Numerical Limitations Table) to delete food service categories.

Table 23E.44.040			
Numerical Limitations			
Use	Number Limit	Size (sq. ft.)	Type of Permit
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500	Zoning Certificate
Bookstores, Periodical Stands	No limit	2,000	Zoning Certificate
Food Service Establishments:	25		
Carry Out Food Service		1,000	Subject to classifications listed in Table 23E.44.030
Quick Service Restaurants		1,000	
Full Service Restaurants		None	
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000	Zoning Certificate

- The following Sections explicitly reference one or more food service categories. Modifications remove these references, but maintain the intent of the Zoning Ordinance using alternate language. Code excerpts are provided below:

23E.52.030.A (Uses Permitted Table/Alcoholic Beverage Service)

No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue, except as incidental to ~~meals in Full Service Restaurants only~~ seated food service; see Section 23D.52.060 D1.

23E.56.030.A (Uses Permitted Table/Alcoholic Beverage Service)

Service of distilled alcoholic beverages may be approved for ~~full service restaurants only~~ seated food service

23E.60.030.A (Uses Permitted Table/Alcoholic Beverage Service)

Service of distilled alcoholic beverages may be approved for ~~full service restaurants only~~ food service establishments providing seated food service; see Section 23E.60.060 D1

23E.52.060.D.1 (Use Limitations*)

The sale and service of distilled alcoholic beverages (hard liquor) is prohibited along Adeline Street, south of Ashby Avenue, except that such service may be allowed subject to obtaining a Use Permit for ~~full~~ seated food service and onsite consumption restaurants when such service is incidental to meals.

23E.56.060.C (Use Limitations*)

On-premises service and consumption of distilled alcoholic beverages shall be permitted with ~~in full service restaurants~~ seated food service only.

23E.60.060.D.1 (Use Limitations*)

No on-premises service and consumption of distilled alcoholic beverages shall be allowed except ~~in full service restaurants with~~ seated food service, and subject to obtaining a Use Permit.

23E.68.040.A.2 (Downtown Arts District Overlay)

The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, ~~full and quick service restaurants~~ seated food service, and uses which provide pedestrian scale and siting.

23E.68.040.C (Downtown Arts District Overlay)

No ~~new carry out food service store~~ food service establishment exclusively providing food for offsite consumption or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

23E.68.090.C (Findings)

For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new food service establishment ~~carry out food service store exclusively providing food for offsite consumption~~ or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:

Section 23E.98.050 Definitions

Specialized food products and no more than 25% of retail space is devoted to one or more of the following Incidental Uses: owner operated and/or independent ~~Carry Out Food and/or Quick Service Restaurants~~ food service establishments selling food from local and regional producers and sales of Retail Products from local and regional produce.

- The following Sections relate to findings for Carry Out Food Stores or Quick Service Restaurants. Modifications remove references or specific findings:

23E.64.030.A (Uses Permitted Table/Food Service Categories)

Food service drive-through prohibited on San Pablo. See Section [23E.64.040.C](#) and E. ~~Also see Section [23E.64.090.H](#) for special findings~~

23E.64.090.H (Findings for Quick Service and Carry Out Food Stores):

Delete "H"

Reasoning: Food service categories were established to track quotas, which are no longer in effect. In most districts, levels of discretion and thresholds are consistent, eliminating the need for specific categories. In the instances where there are inconsistencies, staff has noted exceptions.

QUESTIONS FOR PLANNING COMMISSION:

Reducing Discretion from UP(PH) to AUP: In three instances (in C-T and C-W) certain food service categories require UP(PH)s and therefore create a conflict in condensing food categories. Since the aim of this referral is to streamline permitting, staff used the lower level of discretion (AUPs – which still require neighbor noticing and are subject to appeal) in the draft Zoning Ordinance amendments in these districts. **Does the Commission agree with this approach? If not, provide alternate direction.**

Determining ZC-AUP threshold for Food Service Establishments in the C-DMU: Currently the permit threshold that triggers an AUP in the C-DMU for Quick Service Restaurants and Carry Out Food Stores is 2,000 square feet. The permit threshold that triggers an AUP for Full Service Restaurants is 4,000 square feet. Other commercial districts consistently have low ZC-AUP permit thresholds of either 1,000 square feet (Neighborhood Commercial) or 1,500 square feet (Avenue Commercial). However, the C-DMU is unique in its proximity to transit, UC Berkeley, the Civic Center Overlay, and the Arts District Overlay. It is also characterized by high density housing. **What ZC-AUP threshold does the Commission want to use for Food Service Establishments in the C-DMU?**

Removing 1:300 Parking Requirement for Food Service Establishments: Two food service categories (Quick Service Restaurants and Full Service Restaurants) require more parking than Carry Out Food Stores. As explained in this report, parking regulations were established in 1999 and may not reflect current needs and/or customer shopping patterns. Since the aim of this referral is to reduce barriers to small businesses, draft Zoning Ordinance amendments are written with 1:500 parking requirements for Food Service Establishments. **Does the Commission agree with this approach? If not, provide alternate direction.**

Removing 1,000 square foot Cap on Food Service Establishments in C-E: Currently in the Zoning Ordinance, Carry Out Food Stores and Quick Serve Restaurants in C-E cannot exceed 1,000 square feet without a variance. This regulation was established to preserve the character and quality of storefronts within the commercial district. This regulation does not apply to Full Service Restaurants. Currently 25 Food Service Establishments are allowed in the C-E. The draft Zoning Ordinance amendments propose to remove the 1,000 square foot limit, but keep the numerical limitation of 25 and the AUP requirement to locate a Food Service Establishments in the district. **Does the Commission agree with this approach? If not, provide alternate direction.**

In addition to the above, do the proposed draft amendments for Recommendation 2 reflect Planning Commission goals? If no, provide additional direction.

3. Standardize Change of Use Square Footage Thresholds in Commercial Districts

Existing Regulations: The Zoning Ordinance currently requires a UP(PH) for commercial businesses that establish in existing storefronts over a certain size that involve a change of use. Table 2 (below) lists Commercial districts and corresponding size thresholds that trigger a UP(PH):

Table 2: Permits Required for Commercial Change of Use

Zoning District	Commercial Space (square feet)	Existing
C-E, C-N, C-NS, C-SO	over 3,000	UPPH
C-1, C-SA	over 5,000	UPPH

Proposed Amendments:

- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), and 23E.60 (C-SO) modify the legend in Section 23E.XX.030.A (Uses Permitted Table) to reduce the level of discretion from UP(PH) to AUP for the size thresholds listed in the table above. See red-lined example from 23E.36.030.A:

Legend:	
ZC – Zoning Certificate	<p>*Change of Use of floor area between 3,000 and 5,000 sq. ft. shall require an AUP; over 3,000 5,000 sq. ft. shall require an <u>AUP</u> UP(PH)</p> <p><u>**Change of Use of floor area over 5,000 sq. ft. shall require an AUP</u> UP(PH)</p>
AUP – Administrative Use Permit	
UP(PH) – Use Permit, public hearing required	
Prohibited – Use not permitted	

Reasoning: Analysis of district standards showed that existing regulations for change of use thresholds were consistent across Avenue Commercial districts and across Neighborhood Commercial districts (see Attachment 3 for details). Therefore the focus of this recommendation shifted to a helping small business owners by lowering the level of discretion from a UP(PH) to an AUP for commercial businesses moving into existing spaces. This change will shorten permitting timelines and reduce permit costs while still allowing interested parties to comment on applications and submit appeals.

QUESTION FOR PLANNING COMMISSION: Do the proposed draft amendments for Recommendation 3 reflect Planning Commission goals? If no, provide additional direction.

4. Reduce the Level of Discretion from a UPPH to an AUP when Establishing a “Use Deemed Compatible” in a Commercial District

Existing Regulations: The Zoning Officer can approve an unlisted use for a commercial business if the use is deemed compatible with the purposes of the district. The C-N, C-E, C-NS, C-SA and C-SO (all Neighborhood Commercial districts) require a UP(PH) to initiate this process. In all other districts, an AUP is required.

Proposed Amendments:

- In Chapters 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), and 23E.60 (C-SO) modify Section 23E.XX.030.B to reduce level of discretion. See red-lined excerpt from 23E.40.030.B as an example:
 - B. Any Use not listed that is compatible with the purposes of the C-N District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-N District shall be prohibited

Reasoning: This modification creates consistency across all commercial districts and reduces the permit process for business owners. All new uses will be subject to discretionary review and neighbor noticing. Uses must be determined to be compatible with the unique purposes of the district. Note that with an AUP, the Zoning Officer's decision would still be subject to appeal.

QUESTION FOR PLANNING COMMISSION: Do the proposed draft amendments for Recommendation 4 reflect Planning Commission goals? If no, provide additional direction.

5. Apply the Permitting Thresholds for Commercial Recreation Centers in the C-DMU to All Commercial Districts.

Current Regulations: Commercial Recreation Centers (CRCs) currently require a UP(PH) in all commercial districts, except in the C-T and the C-DMU. CRCs are allowed in the C-T (all sizes) with an AUP and 300 foot noticing to neighbors. In the C-DMU, the following regulations apply, as shown in Table 3:

Table 3: Permits Required for CRCs in the C-DMU

Size Threshold (square feet)	Permit Required
under 5,000	ZC
5,000 – 10,000	AUP
over 10,000	UPPH

Proposed Amendments:

- In Chapters 23E.36 (C-1), 23E.56 (C-T), and 23E.64 (C-W) – the Avenue Commercial districts -- modify Section 23E.XX.030.A (Uses Permitted Table/Commercial Recreation Row) to match C-DMU's regulations. See red-lined excerpt from 23E.40.030.B as an example:

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Commercial Recreation Center	<u>UP(PH)</u>	<u>Outdoor use requires UP(PH)</u>

Table 23E.36.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
<u>Under 5,000 s.f.</u>	<u>ZC</u>	
<u>Between 5,000--10,000 s.f.</u>	<u>AUP</u>	
<u>Over 10,000 s.f.</u>	<u>UP(PH)</u>	

- In Chapters 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), and 23E.60 (C-SO) modify Section 23E.XX.030.A (Uses Permitted Table/Commercial Recreation Center Row) where ZC-AUP permitting threshold is 1,500 square feet and AUP-UP(PH) permitting threshold is 5,000 square feet. See red-lined excerpt from 23E.40.030.B as an example:

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Commercial Recreation Center	<u>UP(PH)</u>	<u>Outdoor use requires UP(PH)</u>
<u>Under 1,500 s.f.</u>	<u>ZC</u>	
<u>Between 1,500--5,000 s.f.</u>	<u>AUP</u>	
<u>Over 5,000 s.f.</u>	<u>UP(PH)</u>	

Reasoning: Applying C-DMU's permitting thresholds to Avenue Commercial districts and a lower permit threshold to Neighborhood Commercial districts (note 5,000 square feet is used in the draft Zoning Ordinance amendments) achieves consistency across districts with similar purposes and simplifies the permitting process for business owners. CRCs traditionally have low profit-margins and are operated independently. Reducing the level of discretion will help these smaller businesses establish in Berkeley. CRCs bring energy and foot traffic to commercial districts. This recommendation provides equity for business applicants by creating more location options (i.e. less competition for retail space) and helping with to distribute CRCs throughout the City.

QUESTION FOR PLANNING COMMISSION:

What AUP-UP(PH) threshold does the Planning Commission recommend for Neighborhood Commercial districts? See the *Threshold* discussion in the Background section of this report for more information.

Do the proposed draft amendments for Recommendation 5 reflect Planning Commission goals: If not, provide direction?

6. Allow the incidental service of beer and wine at food service establishments with a Zoning Certificate and conformance to performance standards.

Current Regulations: Currently, beer and wine incidental to seated food service requires an AUP in all commercial districts. AUPs require conditions of approval that outline operating procedures and expectations.

Proposed Amendments:

- In Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), 23E.56 (C-T), 23E.60 (C-SO), 23E.64 (C-W), and 23E.68 (C-DMU), modify Section 23E.XX.030.A (Uses Permitted Table) to lower the level of discretion from an AUP to a ZC for "Alcoholic Beverage Service of beer and wine incidental to seated food service." Exact language may differ, but see red-lined excerpt from 23E.40.030.A as an example:

Table 23E.40.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Alcoholic Beverage Service of beer and wine incidental to <u>seated</u> food service at quick and full service restaurants	AUP <u>ZC</u>	For on-site consumption only

- In Chapters 23E.16 (Special Provisions) modify Section 23E.16.040.A (Alcoholic Beverages) to add performance standards to be applied with beer and wine service incidental to food service in Commercial districts. Full text of code is provided in Attachment 2. See red-lined excerpt from 23E.16.040.A to see how existing code has been modified to accommodate performance standards.
 - A. No alcoholic beverage sales or alcoholic beverage service may be commenced or increased in any way unless authorized by a Use Permit, except that:
 - In C-prefixed districts, quick-service or full-service food service establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by a Zoning Certificate subject to the following ALCOHOLIC BEVERAGE SERVICE performance standards:

<< see Attachment 2 for performance standards >>

- In all other districts, food service establishments with incidental beer and/or wine service for seated, onsite consumption may be authorized by an Administrative Use Permit.

Reasoning: Applications for beer and wine are non-controversial and rarely denied. The conditions that are applied to this activity have been proven overtime to effectively limit detriment and will be codified in Section 23E.16.040 (Alcoholic Beverages).

QUESTION FOR PLANNING COMMISSION: *Do the proposed draft amendments for Recommendation 6 reflect Planning Commission goals? If no, provide additional direction.*

NEXT STEPS

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and provide final direction on draft Zoning Ordinance amendments that support small businesses by way of a vote.

ATTACHMENTS

1. September 21, 2018 Public Hearing Notice
2. Draft Zoning Ordinance Amendments
3. July 18, 2018 Staff Report



Planning Commission

FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

October 3, 2018

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

Location: North Berkeley Senior Center, Berkeley, CA

1. ROLL CALL:

Commissioners Present: Steve Martinot, Robb William Kapla, Christine Schildt, Jeff Vincent, Benjamin Fong, Prakash Pinto, Rob Wrenn, Mary Kay Lacey (arrived 7:06).

Commissioners Absent: Benjamin Beach (excused)

Staff Present: Secretary Alene Pearson, Sydney Stephenson, Eleanor Hollander (OED staff).

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: No speakers.

4. PLANNING STAFF REPORT: Next Planning Commission meeting will be on November 7th. In Item 10, staff will recommend that the Commission create subcommittee to work on the 2018-2019 Commission Work Plan on October 17.

Communication in the Packet: None.

Late Communications (Received after the Packet deadline):

- 2018-10-03 – Laurie Rich, David Brower Center, Item 9
- 2018-10-03 – John Caner, Supporting Small Businesses, Item 9
- 2018-10-03 – Jordan Klein, OED Staff, Anti-displacement and supports for women and minority-owned businesses, Item 9
- 2018-10-03 – Staff, City Council Annotated Agenda 10-18-2016
- 2018-10-03 – Beth Greene, Staff, Cannabis Commission Fact Sheet, Item 11
- 2018-10-03 – Staff, Council Referral on Auto Sales, Item 12
- 2018-10-03 – Linda C. Klein, Cox Castle Nicholson, Auto Sales in C-SA, Item 12
- 2018-10-03 – Betsy Thurgard, Auto Sales in C-SA, Item 12
- 2018-10-03 – Friends of Adeline, Adeline Corridor, non-agenda item
- 2018-10-03 – Timothy Burroughs, Director of Planning Department, Response to Friends of Adeline, non-agenda item

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

Motion/Second/Carried (Schildt/Wrenn) to close the public hearing for Item 9. Ayes: Martinot, Schildt, Fong, Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Motion/Second/Carried (Schildt/Kapla) to recommend to Council to approve all six of staff's recommendations, with the following amendments: 1) change Recommendation #2 to require an AUP for Food Service Establishments in the C-DMU that are greater than 3,000 sq. ft.; 2) amend Recommendation #5 to require an AUP for all Commercial Recreation Centers in Neighborhood Commercial districts; and 3) require a 300 ft. radius of noticing for AUPs for Food Service Establishments in Neighborhood Commercial districts. The Planning Commission also directs the Office of Economic Development to continue outreach with neighborhood (resident) groups through resources in the City Manager's Office. Ayes: Martinot, Schildt, Fong, Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Public Comments: 3 speakers.

Motion/Second/Carried (Martinot/Kapla) to change of the order of meeting and move Item 12 as the next item for discussion. Ayes: Martinot, Schildt, Fong, Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

12. Discussion: Council Referral: Auto Sales in C-SA District

Planning Commission listened to public comment and briefly discussed the referral. Commissioner Martinot expressed concern about the effects on the automobile businesses on the neighborhood and that fact that there is huge community backing for this referral. Commissioner Wrenn presented what the South Berkeley plans states about auto-related uses. The Planning Commission discussed how to approach referrals that are not ranked but have support from the public. The subcommittee work plan group will consider this question in the context of their work plan discussion.

Public Comments: 9 speakers.

10. Discussion: Planning Commission 2018-2019 Work Plan

Staff recommended that the Planning Commission create a Subcommittee to work on the Work Plan on October 17th with help from staff. The Planning Commission made the following motion:

Motion/Second/Carried (Martinot/Kapla) to create a Subcommittee to develop the 2018-2019 Planning Commission Work Plan and work with staff at an October 17 meeting. The Planning Commission elected Commissioners Vincent, Lacey, Pinto, Schildt to make up the Subcommittee. Commissioner Vincent will be the Chair. Ayes: Martinot, Schildt, Fong, Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Public Comments: None.

108 **11. Action:** **Cannabis October Council Work Session**

109 The Planning Commission elected Rob Wrenn to attend the Cannabis October 9th Work
110 Session.

111 Public Comments: None.

112 **The meeting was adjourned at 10:08 pm**

113 **Commissioners in attendance: 8 of 9**

114 **Members in the public in attendance: 21**

115 **Public Speakers: 12 speakers**

116 **Length of the meeting: 3 hours and 6 minute**

Table of Proposed Commercial Recreation Center (CRC) Permit Thresholds

Land Use Designation	Zoning District	District Title	Size Threshold (square feet)	Permit Required
Neighborhood Commercial	C-E, C-N, C-NS, C-SA, C-SO	Elmwood Commercial, Neighborhood Commercial, North Shattuck Commercial, South Area Commercial, Solano Avenue Commercial	Under 3,000	AUP
			Over 3,000	UP(PH)
Avenue Commercial	C-1, C-T, C-W	General Commercial, Telegraph Avenue Commercial, West Berkeley Commercial	Under 5,000	ZC
			5,000 – 10,000	AUP
			Over 10,000	UP(PH)
Downtown	C-DMU	Downtown Mixed Use Commercial	Under 5,000	ZC
			5,000 – 10,000	AUP
			Over 10,000	UP(PH)

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

ZONING ORDINANCE AMENDMENTS THAT SUPPORT SMALL BUSINESSES

The Department of Planning and Development and the Office of Economic Development are proposing Zoning Ordinance amendments that support small businesses by reducing parking requirements, levels of discretion, and permitting size thresholds for businesses in commercial districts. Amendments also create a single food service category and provide performance standards for restaurants serving beer and wine incidental to food service. Amendments respond to City Council's May 15, 2018 direction to make the zoning process for small businesses less complex and more efficient. Amendments modify Berkeley Municipal Code (BMC) Chapters 23E.16, 23E.36, 23E.40, 23E.44, 23E.48, 23E.52, 23E.56, 23E.60, 23E.64, 23E.68, and 23E.98.

Changes to be considered apply only to commercial districts and are summarized below:

- Remove incremental parking requirement associated with a change of use in existing commercial spaces. (*BMC Sections 23E.28.130, 23E.36.030.A, 23E.36.080.B, 23E.40.030.A, 23E.40.080.B, 23E.48.030.A, 23E.48.080.B, 23E.52.030.A, 23E.52.080.B, 23E.60.030.A, 23E.60.080.B, 23E.64.030.A, 23E.64.080*);
- Condense three food service categories into one category. Consolidation requires reducing parking ratio from 1 space: 300 ft² to 1 space: 500 ft², removing the Use Permit with Public Hearing (UP(PH)) process for certain restaurants in C-T and C-W; modifying permitting threshold-size for certain restaurants in C-W and C-DMU; and removing the 1,000 ft² size-limit on certain restaurants in the C-E. (*BMC Sections 23E.36.030.A, 23E.36.080.B, 23E.40.030.A, 23E.40.080.B, 23E.44.030.A, 23E.44.040.A, 23E.48.030.A, 23E.48.080.B, 23E.52.030.A, 23E.52.060.D.1, 23E.52.080.B, 23E.56.030.A, 23E.56.060.C, 23E.60.030.A, 23E.60.060.D.1, 23E.60.080.B, 23E.64.030.A, 23E.64.080.B, 23E.64.090.H, 23E.68.030. A, 23E.68.040.A.2, 23E.68.090.C, 23E.98.050*);
- Reduce level of discretion associated with a change of use from UP(PH) to Administrative Use Permit (AUP) for certain uses. Changes apply to existing commercial spaces greater than 3,000 ft² in C-E, C-N, C-NS, C-SO and existing commercial spaces greater than 5,000 ft² in C-1 and C-SA. (*BMC Sections 23E.36.030, 23E.40.030, 23E.44.030, 23E.48.030, 23E.52.030, 23E.60.030*);
- Reduce the level of discretion from a UP(PH) to an AUP when establishing a "Use Deemed Compatible" in C-E, C-N, C-NS, C-SA, C-SO. (*BMC Sections 23E.40.030.B, 23E.44.030.B, 23E.48.030.B, 23E.52.030.B, 23E.60.030.B*);
- Reduce level of discretion for Commercial Recreation Centers from UP(PH) to AUP or Zoning Certificate (ZC) depending on size and location of business. (*BMC Sections*

23E.36.030.A, 23E.40.030.A, 23E.44.030.A, 23E.48.030.A, 23E.52.030.A, 23E.56.030.A, 23E.60.030.A, 23E.64.030.A); and

- Allow incidental service of beer and wine at Food Service Establishments with a ZC and conformance to performance standards. Codify performance standards for beer/wine with seated food service. (*BMC Chapter 23E.16 and BMC Sections 23E.36.030.A, 23E.40.030.A, 23E.44.030.A, 23E.48.030.A, 23E.52.030.A, 23E.56.030.A, 23E.60.030.A, 23E.64.030.A, 23E.68.030.A*).

Affected districts include: C-1, C-E, C-N, C-NS, C-SA, C-SO, C-T, C-W, and C-DMU. The zoning map is available online: http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

The hearing will be held on November 27, 2018 at 6:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of November 15, 2018.

For further information, please contact Alene Pearson at 510-981-7489 or Eleanor Hollander at 510-981-7536.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

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Noticing per California Government Code Sections 65856(a) and 65090

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 15, 2018.

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Mark Numainville, City Clerk