



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, June 20, 2018
7:00 PM

North Berkeley Senior Center
1901 Hearst Ave / MLK Jr. Way

See “MEETING PROCEDURES” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Lacey, Mary Kay, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by, Councilmember Hahn, District 5
Kapla, Robb William, for Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Worthington, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: July 18, 2018.**
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on May 16, 2018.
8. **Future Agenda Items and Other Planning-Related Events:** None.

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

- 9. Discussion:** **Small Business Package Referral**
Recommendation: Discuss the Office of Economic Development proposal for Zoning Ordinance amendments and provide comments.
Written Materials: Attached.
Web Information: N/A.
Continued From: N/A.
- 10. Discussion:** **Planning Commission Workplan Progress Presentation**
Recommendation: Review Planning Commission’s progress on 2017-2018 workplan and preview newly adopted RRV ranked referrals.
Written Materials: N/A.
Web Information: N/A.
Continued From: N/A.
- 11. Discussion:** **Final Report from Subcommittee on Affordable Housing and Community Benefits**
Recommendation: Discuss subcommittee’s accomplishments and status.
Written Materials: Attached
Web Information: N/A.
Continued From: 5/16/18.

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items: None.

Communications:

- 2018-06-20 Shira Ilana Leed, Chairperson of Commission on Disability, Letter Regarding ADU amendments

Late Communications (Received after the Packet deadline): None.

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

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

- To have materials included in the packet, the latest they can be submitted to the Commission Secretary is close of business (5:00 p.m.), on Tuesday, eight (8) days prior to the meeting date.
- To submit late materials for Staff to distribute at the Planning Commission meeting, those materials must be received by the Planning Commission Secretary, by 12:00 p.m. (noon), the day before the Planning Commission meeting.
- Members of the public may submit written comments at the Planning Commission meeting. To submit correspondence at the meeting, please provide 15 copies, and submit to the Planning Commission Secretary before the start time of the meeting.
- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Written comments/materials should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records 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 a City board, commission, or committee, 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 Secretary of the relevant board, commission, or committee. 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 Secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: If you object to a project or to any City action or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **May 16, 2018**

3 The meeting was called to order at 7:01 p.m.

4 **Location:** North Berkeley Senior Center, Berkeley, CA

5 **Commissioners Present:** Steve Martinot, Benjamin Beach, Robb William Kapla, Christine
6 Schildt, Jeff Vincent, Rob Wrenn, Prakash Pinto, Benjamin Fong, Mary Kay Lacey.

7 **Commissioners Absent:** None.

8 **Staff Present:** Alex Amoroso, Alene Pearson, Elizabeth Greene, and Sydney Stephenson.

9 **ORDER OF AGENDA:** No changes.

10 **CONSENT CALENDAR:** None.

11 **PUBLIC COMMENT PERIOD:** 1 speaker.

12 **PLANNING STAFF REPORT:** On March 27, Council approved R-1A amendments as Planning
13 Commission recommended with the exception of changing the applicable projects to residents
14 with Use Permits. On May 5, Council approved the first reading of the ADU Chapter
15 amendments. JSISHL meets tomorrow night (May 17). ZORP Subcommittee meets on May 23
16 from 7pm to 9pm. This is Principal Planner, Alex Amoroso's last meeting; the City has been
17 interviewing for his replacement.

18 **COMMUNICATIONS IN PACKET:**

- 19 • 2018-05-16 – Nathan Stalnaker – Regional Measure 3
- 20 • 2018-05-16 – Jordan Klein – COB Arts and Culture Plan

21
22 **LATE COMMUNICATIONS** (Received after the Packet deadline): None.

23 **LATE COMMUNICATIONS** (Received and distributed at the meeting):

- 24 • 2018-05-16 Staff – Revised Cannabis Nurseries Map
- 25 • 2018-05-16 Sally Nelson – 1900 4th Street and SB35 fast track permit

26 **CHAIR REPORT:** None.

27 **COMMITTEE REPORT:** None.

28 **7. APPROVAL OF MINUTES:**

29 Motion/Second/Carried (CS/JV) to approve the Planning Commission Meeting Minutes from
30 April 18, 2018 with amendments to: 1) the motion regarding the 1050 Parker project, 2) the
31 summary of staff update of the Adeline Corridor Project. Ayes: Lacey, Beach, Martinot, Schildt,
32 Kapla, Vincent, Pinto, Fong. Noes: None. Abstain: Wrenn. Absent: None. (8-0-1-0)

33
34 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** The next
35 Planning Commission meeting is on June 20. At this meeting the Office of Economic
36 Development will present their small business package referral and staff will provide an
37 update on the Planning Commission’s work plan.

38 **AGENDA ITEMS**

39 **9. Action: Public Hearing: Urban Agriculture**

40 Staff presented the draft Zoning Ordinance language for Urban Agriculture and provided a
41 brief overview of the content changes that addressed Planning Commission direction and
42 public input from the March 21 meeting. The Planning Commission held a public hearing for
43 this topic and then discussed the draft Zoning Ordinance language. The Commission passed
44 the following motions.

45 Public Comments: 1 speaker.

46 Motion/Second/Carried (CS/MK) to recommend to Council:
47 1) Adopt new BMC Chapter 23C.26 Urban Agriculture, with modification to 23C.26.060.E to
48 read as: Any Urban Agriculture use that uses non-organic pesticides is considered an HIUA.
49
50 2) Adopt new definitions of Urban Agriculture and Urban Agricultural Products, with
51 modification to Urban Agriculture to read as: Urban Agriculture (including community gardens):
52 the production of horticultural crops for harvest, sale, and/or donation. Urban Agriculture does
53 not include cannabis cultivation.
54
55 3) Amend *Uses Permitted Tables* in all applicable Zoning districts to allow for Urban
56 Agriculture, and a ZC for Accessory Buildings on lots with Urban Agriculture.
57
58 4) Consider the use of pesticide in the City and the State preemption of local regulation of
59 pesticide use; and to refer to the appropriate Commission for further analysis
60
61 The motion passed 9-0-0-0. (Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Vincent, Wrenn,
62 Pinto, Fong. Noes: None. Abstain: None. Absent: None.)

63
64 **10. Discussion: Council Referral: Allowing Existing Nurseries to incorporate**
65 **Cannabis Sales**

66 Staff reviewed the issues and concerns of considering allowing existing nurseries to
67 incorporate cannabis retail sales, including: location of existing nurseries, conformity with

68 state regulations, and conformity with local regulations. The Planning Commission discussed
69 this issue and unanimously decided to not take this issue up until the Council provides more
70 clarity including a decision on the quota for retail licenses and the location of retail licenses.

71 Public Comments: 2 speakers.

72 **11. Discussion: Transition of Subcommittee on Affordable Housing and**
73 **Community Benefits – Reconstitute and Refocus**

74 At the last subcommittee meeting the commissioners discussed the next steps for the
75 subcommittee and the referrals related to affordable student housing. The Chair suggested
76 an option to refocus the subcommittee to Affordable Student Housing and reconstitute the
77 subcommittee with new commissioners. The Commission decided to wait to make a decision
78 about this subcommittee until the Joint Subcommittee decides on their work plan.

79 Public Comment: 1 speaker.

80

81 The Commission acknowledged Alex Amoroso's last Planning Commission meeting before
82 his retirement.

83 **The meeting was adjourned at 9:30 pm**

84 **Commissioners in attendance: 9 of 9**

85 **Members in the public in attendance: 6**

86 **Public Speakers: 5 speakers**

87 **Length of the meeting: 2 hour and 29 minutes**



Planning and Development Department

STAFF REPORT

DATE: June 20, 2018

TO: Members of the Planning Commission

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

SUBJECT: Modifications to the Zoning Ordinance to Support Small Businesses

INTRODUCTION

In April 2017, City Council referred to the City Manager the development of programs and policies to support Berkeley's small businesses, including "streamlining of zoning, permitting and licensing requirements and processes." Among the strategies that Council asked staff to analyze and implement were processes "for small/local businesses and not-for-profits [that] reduce associated costs and delays, and, where appropriate, provide less onerous levels of review."¹ In the Council's annual referral prioritization process conducted in May 2017, this "Small Business Support Package" item was ranked as the Council's top priority among the referrals not pertaining to housing.

Staff from the Office of Economic Development (OED) and the Planning Department have worked together to identify six potential modifications to the Zoning Ordinance to make the zoning review process for small businesses less complex and more efficient. Council affirmed this policy direction with a unanimous vote at their meeting on May 15, 2018 to refer the following six recommendations to the Planning Commission for consideration²:

- 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;

¹ See [Small Business Support Package](#), adopted by Berkeley City Council, Item 41, April 25, 2017.

² See [Referral Response: Modifications to the Zoning Ordinance to Support Small Business](#), adopted by Berkeley City Council, Item 9, May 15, 2018.

- 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 (ZC) in C- prefixed districts, and impose performance standards where there would not otherwise be conditions of approval.

At tonight’s meeting, staff is seeking input from the Planning Commission on each proposed change. At subsequent meetings and Public Hearings, the Planning Commission will be asked to review and provide feedback on draft Zoning Ordinance amendments. Future Public Hearings will also provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups as well.

BACKGROUND

Since its last major overhaul in 1999, the Zoning Ordinance has been updated at least 14 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Independent of the ongoing targeted Zoning Ordinance Revision Project (ZORP), 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.³ 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.

Proposed modifications are designed with consideration of the unique needs and challenges of small businesses. Over the first quarter of 2018, OED and Planning Department staff 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 businesses and residents. Staff consulted with business district network leaders, and numerous individual owners and operators of Berkeley’s small businesses and also considered recent experiences of business owners that decided *not* to locate or expand in Berkeley.

Consequently, the six proposed modifications to the Zoning Ordinance are an important component of a broader effort to improve customer service and achieve Berkeley’s strategic plan goals of fostering a sustainable, locally-based economy⁴ while honoring

³ See, [Economic Development Worksession: Small Business Support](#) (pages 4 and 5) and accompanying [presentation](#) (pages 13 and 14), Berkeley City Council, January 16, 2018.

⁴ See *City of Berkeley 2018-2019 Strategic Plan*, adopted by Berkeley City Council, January 16, 2018.

the City's commitment to public participation. 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. 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.⁵

PROPOSED AMENDMENTS

Discussion and details of the six draft Zoning Ordinance amendments are presented below. For each amendment, staff has provided background information, recommendation, and rationale of the change.

1. Remove the parking requirement for a change of use for qualifying projects in C-prefixed districts.

Background: 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. If an applicant does not (or cannot) provide additional parking, they can apply for a parking waiver via an Administrative Use Permit (AUP). Typically, 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.

Recommendation: Remove parking minimum requirement for commercial changes of use, and adopt a definition of 'qualifying projects' to include: commercial changes of use with no external changes to the building or increase in floor area (save for a sign replacement or reasonable accommodations for ADA access) and/or changes of use beneath square footage thresholds of 5,000 and 10,000 square feet.

Rationale: Studies show that parking minimums induce demand for trips via single occupancy vehicles⁶, which is counter to the City's environmental goals and best practices in planning and economic development. Employing parking minimums is an outdated practice and has been dispensed with in some of Berkeley's neighboring jurisdictions (e.g., Albany, Oakland), putting our City at a competitive disadvantage. This change would be necessary to facilitate changes of commercial uses in commercial districts and will shorten the length of time for a business to become established (by not requiring an AUP, which is approximately 5-6 months

⁵ See, City of 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."

⁶ See: Eric Jaffe, [The Strongest Case Yet That Excessive Parking Causes More Driving](#), Citylab, January 12, 2016 and Christopher McCahill et al, [Effects of Parking Provision on Automobile Use in Cities](#), Transportation Research Record, Journal of the Transportation Research Board, Vol. 2543, 2016.

and \$1,200 in expense) and simultaneously reducing commercial vacancy during turnovers.

2. Condense three food service categories to one “food service establishment” classification.

Background: The Zoning Ordinance currently includes three restaurant categories: carry out, quick and full service. 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 of food establishments, but no distinctions by type). Currently, the application of these categories for prospective food purveyors can cause confusion for the public, and difficulty for businesses that seek to slightly adapt their business model.

Recommendation: Condense the three food service categories to one ‘food service establishment’ classification. Along with the text amendment to the definitions section of the Zoning Ordinance, staff recommends that the Zoning Ordinance be amended to impose performance standards for food service, which will include concepts previously articulated in the findings or ‘conditions of approval’ section of the AUP or Use Permit with a Public Hearing (UPPH) (see Attachment 2: Draft Performance Standards for Food Service).

Rationale: The existing three restaurant categories (carry out, quick and full service) reflect the commercial quota system which has not been in place since 2015. One condensed category reduces confusion and provides clarity for potential food service purveyors and permitting staff alike, and can eliminate unintended barriers for businesses seeking to adapt or expand.

3. Standardize change of use square footage thresholds in C-prefixed districts.

Background: Currently in some C-prefixed districts, a change of use between 3,000-5,000 square feet necessitates an AUP. In other C-prefixed districts, a change of use between 2,000-3,000 square feet requires an AUP and a UPPH for greater than 3,000 square feet. This requirement adds additional requirements (and time) to the new use (and user) that is predicated on the previous use.

Recommendation: Standardize the change of use thresholds by either eliminating or raising the square footage threshold to be the same for all C- prefixed districts.

Rationale: A commercial change of use requirement based on square footage is atypical in this region, which could put Berkeley at a competitive disadvantage. This change promotes equitable business opportunities across all commercial districts by standardizing the level of discretionary review (and therefore equalizing the amount of money and time it takes for a business to get established or expand throughout all of Berkeley.)

4. Standardize “uses deemed compatible” across all C-prefixed districts to the same level of discretionary review.

Background: The use table in C-prefixed districts is typically followed by a clause indicating that “any use not listed that is compatible with the purposes of [the district] shall be permitted subject to securing [an AUP or a UP].” The level of discretionary review varies by district. Staff has observed that this clause is especially relevant to businesses with hybrid business models, where the secondary use is not necessarily included among the listed incidental uses. 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, experiential commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts.

Recommendation: Amend the “uses deemed compatible” process for any C-prefixed District that requires a Use Permit to instead only require an AUP. Staff believes that this approach will continue to serve the community as the same standards for review apply to the AUP process, which is also subject to appeal.

Rationale: This modification will allow the Zoning Ordinance to better accommodate businesses whose models were not previously anticipated, and eliminate unintended barriers for desired uses.

5. Expand the commercial recreation designation requirements adopted in the C-DMU (2016) across all C-prefixed districts.

Background: Commercial recreation includes “any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment.” This category includes, for example, bocce, ‘escape rooms’, and indoor miniature golf. As competition from the Internet grows, these ‘experiential’ entertainment uses are increasingly important to the health of commercial districts. Currently, establishing a commercial recreation use in any district except C-DMU is subject to a (UPPH) or prohibited outright.

Recommendation: 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 2016.⁷ These levels are listed in the table below:

Area	Discretionary Permit
Under 5,000 ft ²	ZC
Between 5,000 – 10,000 ft ²	AUP
Over 10,000 ft ²	UPPH

⁷ See: Berkeley City Council, [Commercial Recreation Center Uses in the Downtown Mixed Use Zoning District \(C-DMU\); Amending BMC Chapters 23E.68 and 23F.04](#), March 15, 2016.

Rationale: Staff expects that interest in establishing commercial recreation will continue to grow. Easing regulatory restrictions on commercial recreation centers in all districts will serve and strengthen the community and could potentially eliminate the need for neighborhood consumers to drive to recreational entertainment, thus reducing vehicle miles traveled (VMT) locally. This amendment will lower barriers for these establishments while retaining the appropriate level of discretion for larger spaces.

6. Allow the incidental service of beer and wine at a food service establishment via a ZC, and add standard conditions of approval as performance standards in the Zoning Ordinance.

Background: Currently, an operator of a food service establishment must obtain a Tier 4 AUP (approximately two to five months and \$1,890 in fees) to serve beer and wine. This review process is separate and in addition to the review required by the Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol.

Recommendation: Adopt revised text to Chapter 23E.16.040 (*Alcoholic Beverages*). Along with the text amendment, staff recommends that the Zoning Ordinance be amended to impose performance standards for beer and wine service incidental to food service, which will include concepts that might have previously been articulated in the findings or 'conditions of approval' section of the AUP or UP (see Attachment 3: Draft Performance Standards for Beer and Wine Service Incidental to Food Service). Staff seeks the Commission's feedback on the content and enforcement mechanism of the performance standards.

Rationale: By easing the regulatory process (but not the content) for the service of beer and wine incidental to food service at food establishments, this amendment reduces the length, expense and uncertainty of the entitlement process for food service purveyors, and it provides a service that is commonly provided with these uses.

DISCUSSION

The following questions are for Planning Commission's consideration based on the information provided in this report and on Planning Commission's discussion:

1. ***Do you have feedback on the six proposed Zoning Ordinance modifications to support small businesses from City Council referral of May 15, 2018?***
 - a. ***For elimination of the parking requirement, how should the requirements for qualifying projects be defined (Recommendation 1)?***
 - b. ***How should the thresholds for discretionary review of change of use be set (Recommendation 3)?***
 - c. ***Feedback on reduced discretion for incidental beer and wine service (Recommendation 6)?***

2. Will Planning Commission set a public hearing on July 18, 2018 to discuss recommended actions and draft Zoning Ordinance amendments related to City Council's Small Business Support Package referral?

CONCLUSION

The Zoning Ordinance modifications proposed in this report simplify the permitting process for small businesses. The amendments are designed specifically to support small independent business and non-profit operators seeking to invest and activate Berkeley's commercial districts. Proposed modifications will help establish businesses that provide the community with needed goods and services and reflect the requests and policy direction set by the City Council. After receiving direction from the Planning Commission, staff will return with detailed draft Zoning Ordinance amendments for consideration at a public hearing.

ATTACHMENTS

1. Referral Response: Modifications to the Zoning Ordinance to Support Small Business, May 15, 2018.
2. Draft Performance Standards for Food Service
3. Draft Performance Standards for Beer and Wine Service Incidental to Food Service



Office of the City Manager

09CONSENT 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.

Modifications to the Zoning Ordinance to Support Small Businesses

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

Modifications to the Zoning Ordinance to Support Small Businesses

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.

Modifications to the Zoning Ordinance to Support Small Businesses

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.

Modifications to the Zoning Ordinance to Support Small Businesses

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

Jordan Klein, Economic Development Manager, (510) 981-7534
Timothy Burroughs, Director, Planning & Development, (510) 981-7437

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.

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.

FOOD SERVICE CONDITIONS

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

1. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Zoning Officer. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
2. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Landmarks Structural Alterations Permit and approval prior to issuance of a building permit.
3. The hours of operation of the restaurant portion of the business shall be limited to what is allowable per the specifications of the zoning district where the establishment is located. Hours of operation refer to arrival of the first patron and departure of the last patron.
4. Cooking odors, noise, exterior lighting and operation of any parking area shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
5. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the restaurant shall be installed prior to issuance of an Occupancy Permit.
6. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code (BMC).
7. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
8. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
9. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.

- 10.** 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.

- 11.** 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.

DRAFT

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

1. Alcoholic 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*. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use. In addition, the California Department of Alcohol Beverage Control (ABC) allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
2. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
3. The applicant shall comply with all ABC regulations for this type of license, 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 comply with *Berkeley Municipal Code (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.
6. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
7. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance

statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.

8. The service of alcohol shall be limited to the restaurant's hours of operation. Patrons may only purchase food or finish drinks already purchased within the hours noted above. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
9. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
10. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
11. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
12. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
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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: June 20, 2018

TO: Members of the Planning Commission

FROM: Chris Schildt, Planning Commission Chair, Subcommittee Chair

SUBJECT: Final Report for the Planning Commission Subcommittee on Affordable Housing and Community Benefits

BACKGROUND

On October 4, 2017, the Planning Commission established a Subcommittee on Affordable Housing and Community Benefits. Commissioners Ben Beach, Chris Schildt, Jeff Vincent, and Rob Wrenn were appointed to the subcommittee. The subcommittee met three times between November 2017 and February 2018. The subcommittee initially identified two areas of work to advance affordable housing in the City: local density bonus and streamlining of affordable housing. The subcommittee decided to take up local density bonus as its first charge, and then take up streamlining.

LOCAL DENSITY BONUS

For local density bonus, a three-part workplan was developed:

1. Codify existing City practice on the application of the state density bonus program;
2. Explore options to create a local density bonus program that could potentially create additional incentives (such as increased density bonus up to 50 percent of the base project) and flexibility (such as paying fees into the Housing Trust Fund rather than providing on-site units; and
3. Establish city-wide density standards for all zones that do not have them.

Codify existing practice on the application of the state density bonus program

The first part of this workplan, to develop draft Zoning Ordinance amendments that codify existing practice, was accomplished earlier this year. City staff first brought draft Zoning Ordinance language to the subcommittee for feedback, then presented it to the full Planning Commission. The first reading of the draft Zoning Ordinance amendments will be considered by City Council on June 26, 2018.

Explore creating a local density bonus program

Staff began work on the second part – to explore local density bonus program – and presented options to both the subcommittee and the full Planning Commission. After deliberations, the Commission could not agree to move forward on any of the options for a local density bonus program due to a number of concerns, including concerns about potential conflict with the state density bonus program. Some members of the Commission have expressed an interest in continuing to explore this idea as a pilot in the Southside area specific to incentivizing the creation of more student housing, as suggested in multiple City Council referrals^{1,2,3}.

Establish density standards

For the final part of the workplan, the City has developed an RFP to hire a consultant to develop city-wide density standards. This work will be folded into the workplan of the newly created Joint Subcommittee on the Implementation of State Housing Laws (JSISHL), as it relates to the creation of objective standards, which is a part of the JSISHL workplan.

STREAMLINING AFFORDABLE HOUSING

The subcommittee also explored the question of streamlining affordable housing production in the city. This issue was referred to the Commission by Councilmembers Lori Droste and Ben Bartlett. Central to any streamlining process is the creation of clear objective standards that staff can clearly interpret and apply to projects. The issue of creating objective standards is the top priority of JSISHL, and this work is being incorporated into the workplan of that Commission.

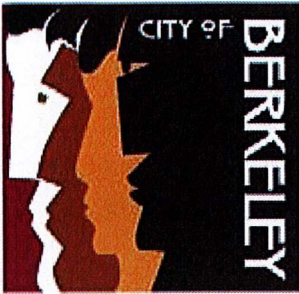
STUDENT HOUSING

Finally, a number of referrals have come before the Planning Commission related to facilitating the production of more affordable student housing. In February 2018, the Commission held a one-hour forum with students in which students presented several ideas for the city to promote more student housing. This is an important issue that should be taken up by the Planning Commission, and should possibly have a separate subcommittee created to focus specifically on this issue.

¹ [Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals](#) (May 30, 2017)

² [City Manager and Planning Commission Referral: Facilitate Primarily Student Housing by a Twenty Feet Height Increase and Adjust Floor Area Ratio in the R-SMU, R-S and R-3 Areas Only From Dwight to Bancroft and From College to Fulton](#) (October 31, 2017)

³ [Referral to the Planning Commission to Allow 4 Temporary Zoning Amendments to Increase Student Housing in the Southside Area](#) (May 1, 2018)



Commission on Disability

Date: June 7, 2018
Subject: Request for consideration of Universal Design/Visitability elements in amendment of ADU Ordinance
Dear: Planning Commission, c/o Alene Pearson (Secretary)

Hello:

First, our apologies for the lateness of this correspondence which includes suggestions for Universal Design/Visitability/Accessibility elements to be included in the amended ADU ordinance. For a number of reasons we were not ultimately involved in the ADU Ordinance Amendment process.

We understand, however, that on June 12th, there is an Item (Consent Calendar Item 33) that may direct your Commission to return to the amendment process and consider 6-7 additional items; one of which is Universal Design/Visitability/Accessibility. In that event, and even if this does not occur:

We ask that you 1) consider the enclosed document text and the suggestions contained therein for how to make ADUs more accessible, and that you incorporate them into your amendment process, 2) contact us for clarifications and/or for help (as needed) in connecting with those people in the disability community with subject matter expertise, and 3) that you grant at least 3-5 minutes for one of our commissioners- Alex Ghenis- to speak regarding this matter, on behalf of our commission, at your June 20th meeting.

Similar language to that provided here, will also go to Council- (thus, the Item-style format).

Please direct any response to our secretary, Ella Callow (contact information is in footer).

Best regards,


Shiva Ilana Leeder

Chairperson, Commission on Disability

RECOMMENDATION

The Commission on Disability is recommending that the Planning Commission include input from the disability community, accessibility experts, and other related stakeholders, prior to finalization of the ADU ordinance amendment. We would like the Planning Commission to include special considerations for creating ADUs that are visitable and accessible when possible, and consider incentives for accessibility. Changes in the ADU ordinance represents an opportunity for increased accessible housing in Berkeley, with potential benefits to homeowners and future residents.

CURRENT SITUATION AND ITS EFFECTS

There have been changes in the state laws for ADUs (accessory dwelling units) which require the city of Berkeley to look back at Berkeley's ADU ordinance and amend it. The creation of additional ADUs provides an opportunity for more housing, and in many cases the housing that is created could potentially be accessible or visitable. Units that are accessible or visitable by those with disabilities are also beneficial to an aging population and intergenerational living.

One reason the Commission on Disability is particularly interested in the ADU issue is that design decisions in the initial creation or plan of a unit are more cost effective, and that many individuals or builders planning to create or convert an existing structure to an ADU may not consider simple design choices that will make their units accessible or inaccessible. These units that use to be called "in-law" or "granny" units can sometimes be designed for better access, such as level in, wider door, and a bathroom that allows a wheelchair. There may be other design modifications for inclusion of other disabilities, and modifications for safety in ageing.

We are not currently aware of other municipalities with ADU accessibility/visitability ordinances.

BACKGROUND

1. Visitability: <https://visitability.org>

From this website: **"A house is visitable when it meets three basic requirements:**

- one zero-step entrance.
- doors with 32 inches of clear passage space.
- one bathroom on the main floor you can get into in a wheelchair.

"When someone builds a home, they're not just building it for themselves — that home's going to be around for 100 years," Concrete Change founder [Eleanor Smith](#) told The New York Times. "These things hurt nobody — and they help a lot of other people."

A link to the 2002 article from the New York Times about visitability ordinances : <https://www.aarp.org/ppi/info-2017/expanding-implementation-of-universal-design-and-visitability-features-in-the-housing-stock.html>

2. This info from the AARP website:

<https://www.aarp.org/ppi/info-2017/expanding-implementation-of-universal-design-and-visitability-features-in-the-housing-stock.html>

“In less than 15 years, one in five Americans will be age 50 and older. Our rapidly aging population will have a vast impact on our communities and how well suited they are to meet our range of needs at every life stage. Older adults want to remain in their homes and communities as they age. However the risk of developing health issues can increase with age and our homes must be able to support family members that might develop a disability.

Right now, many homes across the country contain physical barriers that keep people isolated: difficult to move from room to room, have walkways and hallways too narrow to accommodate a wheelchair or lack features that allow people to bathe without significant help. Therefore it’s imperative that we find and implement solutions to make homes safer and easier to navigate, especially for people with limited mobility. “

ENVIRONMENTAL SUSTAINABILITY

It is more sustainable to build or remodel an ADU the first time to include visitable or accessible features. Projects that pre-plan for individuals with disabilities and the aging of the population are more likely to last longer without modification.

RATIONALE FOR RECOMMENDATION

The conversion of garage to ADU is an example where an existing structure has features that make it potentially very accessible to those with mobility impairment, and choices about door size and layout can make a huge difference in the future potential uses of the unit.

The commission understands that not every ADU can be accessible to mobility impairments, and that some types of units may not significantly be made more accessible.

In units that are potentially mobility accessible, such as an existing level-in structure, one way to incentivize accessibility may be to provide some type of benefit to homeowners who build to an accessible standard, for example allowing some extra square feet if it is for an accessible bathroom. There are likely other ways to build accessibly, and likely other incentives, and these could be further considered.