



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

Click here to view the entire Agenda Packet

**Wednesday, February 3, 2021**

**7:00 PM**

**PUBLIC ADVISORY:** THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Planning Commission (PC) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID19 virus, there will not be a physical meeting location available.

**To access the meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/92666989360>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial **1 669 900 6833** and enter Meeting ID: **926 6698 9360**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See **"MEETING PROCEDURES"** below.

**All written materials identified on this agenda are available on the Planning Commission webpage:**[https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

### **PRELIMINARY MATTERS**

- 1. Roll Call:** **Wiblin, Brad**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff**, appointed by Councilmember Taplin, District 2  
**Schildt, Christine**, appointed by Councilmember Bartlett, District 3  
**Lacey, Mary Kay, Vice Chair**, appointed by Councilmember Harrison, District 4  
**Beach, Benjamin**, appointed by Councilmember Hahn, District 5

**Kapla, Robb, Chair**, appointed by Councilmember Wengraf, District 6  
**Krpata, Shane**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali**, 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.
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 **January 20, 2021**.
8. **Future Agenda Items and Other Planning-Related Events:**

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

9. **Action:** **Planning Commission Elections**  
**Recommendation:** Elect the Chair and Vice Chair of the Planning Commission.  
**Written Materials:** N/A  
**Presentation:** N/A
10. **Discussion:** **Public Hearing on Business Support Zoning Amendment Referrals – Amusement Device Arcades**  
**Recommendation:** Hold a public hearing and consider amendments to the Zoning Ordinance that pertain to Amusement Device Arcades  
**Written Materials:** Attached  
**Presentation:** N/A

**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:**

- January 22 – Staff, Surveys and Town Hall Information

**Late Communications:** (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

**ADJOURNMENT**

**\*\*\*\* MEETING PROCEDURES \*\*\*\***

**Public Testimony Guidelines:**

All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. 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. 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.

**Procedures for Correspondence to the Commissioners:**

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info). All materials will be made available via the Planning Commission agenda page online at this address: <https://www.cityofberkeley.info/PC/>.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.

- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

**Note: It will not be possible to submit written comments at the meeting.**

**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.

**Communication Access:** To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

**Meeting Access:** 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.

---

I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on **January 28, 2021**.

---

Alene Pearson  
Planning Commission Secretary



29 Partnership for the Bay's Future Fellow, Anna Cash, provided a background on the Challenge  
30 Grant and on-going efforts to research and develop local policies that address the displacement  
31 of Black and other people of color from Berkeley. These policies include a local preference  
32 policy that would allow those with ties to Berkeley to gain access to new affordable housing and  
33 a policy that would give Berkeley tenants the first opportunity to buy the rental property they live  
34 in, when the owner decides to sell (TOPA). As part of this work, staff also shared concurrent  
35 outreach efforts to engage and receive input from the community. The City will hold a virtual  
36 forum on TOPA on Wednesday, January 27 from 5-6:30pm.

37 **Public Comments: 2**

38 **8. Action: *Gentrification and Displacement Referral***

39 Members of the Planning and the Housing Advisory Commission discussed different  
40 approaches to address the Gentrification and Displacement Referral, focusing on the  
41 parameters for additional research on the impacted Black and Brown populations and possible  
42 policy deliverables to be presented to Council.  
43

44 **Public Comments: 3**

45 **9. APPROVAL OF MINUTES:**

46 Motion/Second/Carried (Wiblin/Lacey) to incorporate amendments to line 92 and approve the  
47 Planning Commission Meeting Minutes from January 6, 2020.

48  
49 Ayes: Beach, Ghosh, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.  
50 Abstain: None. Absent: None. (9-0-0-0)  
51

52 Motion/Second/Carried (Vincent/Krpata) to adjourn the Planning Commission meeting at  
53 10:05pm.

54  
55 Ayes: Beach, Ghosh, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.  
56 Abstain: None. Absent: None (9-0-0-0)  
57

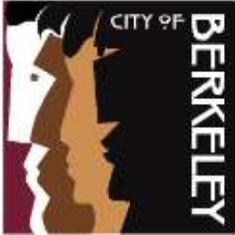
58 **Public Comments: 0**

59

60 **Members in the public in attendance: 14**

61 **Public Speakers: 5 speakers**

62 **Length of the meeting: 3 hours and 3 minutes**



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: February 3, 2021  
TO: Members of the Planning Commission  
FROM: Paola Boylan, Assistant Planner  
SUBJECT: Business Support Zoning Amendment Referrals – Amusement Device Arcades

---

### RECOMMENDATION

Staff recommends that Planning Commission conduct a public hearing and, upon conclusion, recommend Zoning Ordinance amendments related to Amusement Device Arcades.

### BACKGROUND

City Council referred to the City Manager five referrals that support Berkeley businesses and bolster Berkeley's commercial districts. These referrals range in scope from broad suggestions to targeted requests, but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses. This report provides recommendations for the following referral, which was discussed by Planning Commission in October 2020:

- Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19)

### DISCUSSION

The Berkeley Municipal Code (BMC) currently prohibits Amusement Device Arcades<sup>1</sup> (Arcades) in the Elmwood Commercial (C-E) district. In June of 2019, City Council referred to the City Manager consideration of levels of discretion for Arcades in the C-E District, recommending that they be re-examined and relaxed (Link 1). To respond to this referral, Planning Commission reviewed analysis of existing and proposed thresholds and

---

<sup>1</sup>**Amusement Device:** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

**Amusement Device Arcade:** An establishment which contains six (6) or more Amusement Devices. An Amusement Device Arcade is a Commercial Recreation Center irrespective of whether such machines are the principal commercial activity of an establishment.

permit requirements for Arcades throughout commercial and manufacturing districts on October 7, 2020 (Attachment 3 and 4). Per Planning Commission’s direction at that meeting, staff drafted the proposed Zoning Ordinance amendments presented below. Amendments fall under two categories:

1. Regulate Arcades as Commercial Recreation Centers
2. Modify Regulations Allowing Amusement Devices Incidental to a Permitted Use

*To read more about the rationale for each recommendation presented below, please see the Planning Commission Report (Link 1).*

**1. Regulate Arcades as Commercial Recreation Centers**

Proposed amendments outlined in this category will allow Arcades to be regulated as Commercial Recreation Centers (CRCs).

**Rationale:** Regulating Arcades as CRCs will reduce redundancy and discrepancies in the BMC. Arcades are currently defined as a type of CRC, but are listed separately in Use Tables and have different levels of discretions and permit thresholds. The CRC permitting structure, developed by Planning Commission and adopted by City Council in December 2018 as part of the Small Business Support Package, is clear, easy to understand and appropriate for Arcades.

- Remove Arcades from Uses Permitted Tables in zoning districts C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU and the MU-R and regulate under the existing CRC use. **Figure 1** summarizes Arcade regulations removed from the Uses Permitted Tables and the current CRC regulations that Arcades will be folded into under each Districts.

**Figure 1.** Summary of Proposed Amendments to regulate Arcades as CRCs

Districts	Remove Existing Arcade Regulations	Maintain CRC Regulations	
		CRC Size Thresholds (sq. ft.)	Permit Required <sup>2</sup>
<b>Neighborhood Commercial</b>			
C-N	Prohibited	Under 3,000 Over 3,000	AUP UP(PH)
C-E	Prohibited		
C-NS	Prohibited		
C-SA	UP(PH)		
C-SO	Prohibited		
<b>Avenue Commercial</b>			
C-1	UP(PH)	Under 5,000 5,000-10,000 Over 10,000	ZC AUP UP(PH)
C-T	Prohibited		
C-W	UP(PH)		
C-DMU	UP(PH)		

<sup>2</sup> Zoning Certificate (ZC) | Administrative Use Permit (AUP) | Use Permit, Public Hearing (UP(PH))

Manufacturing District		
MU-R	Prohibited	Prohibited

- Remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school. (Remove BMC Section 23E.16.050 [Amusement Arcades] as shown below)

**23E.16.050 Amusement Arcades**

No Amusement Device Arcade shall be established within a radius of six hundred (600) feet of any primary or secondary school. (Ord. 6478-NS § 4 (part), 1999)

**2. Modify Regulations Allowing Amusement Devices Incidental to a Permitted Use**

Proposed amendments will allow up to five Amusement Devices as an incidental use to a permitted use with a zoning certificate.

**Rationale:** Arcades are defined as having five or more Amusement Devices. Current regulations allow up-to three Amusement Devices incidental to an established use with either an AUP or a UP(PH), depending on the district. Proposed amendments close the arbitrary gap between Arcades and the incidental use of Amusements Devices. Amendments also reduce permit levels for incidental uses, to align with CRCs and to maintain cohesiveness across BMC regulations. Proposed amendments are listed below and summarized by **Figure 2**.

- Change the maximum number of Amusement Devices allowed as an incidental use to a permitted use from three to five. (Modify Uses Permitted Tables in C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, MU-LI, and MU-R districts)
- Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC). (Modify Uses Permitted Tables in zones C-1, C-T, C-W, C-DMU, MU-LI, and MU-R Districts)
- Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from a Use Permit Public Hearing (UP(PH)) to a Zoning Certificate (ZC). (Modify Uses Permitted Tables in zones C-N, C-E, C-NS, C-SA, and C-SO Districts)

**Figure 2.** Summary of Current and Proposed Regulations for Amusement Devices Incidental to and a Primary Use

	<b>Current</b>	<b>Proposed</b>
<b>Districts</b>	<b>Up to 3 Amusement Devices allowed as an incidental Use</b>	<b>Up to <u>5</u> Amusement Devices allowed as an incidental Use</b>
<b>Neighborhood Commercial</b>		
C-N	UP(PH)	<u>ZC</u>
C-E	UP(PH)	<u>ZC</u>
C-NS	UP(PH)	<u>ZC</u>
C-SA	UP(PH)	<u>ZC</u>
C-SO	UP(PH)	<u>ZC</u>
<b>Avenue Commercial</b>		
C-1	AUP	<u>ZC</u>
C-T	AUP	<u>ZC</u>
C-W	AUP	<u>ZC</u>
C-DMU	AUP	<u>ZC</u>
<b>Manufacturing Districts</b>		
M	Prohibited	Prohibited
MM	Prohibited	Prohibited
MU-LI	AUP	<u>ZC</u>
MU-R	AUP	<u>ZC</u>

**NEXT STEPS**

Staff recommends that the Planning Commission hold a public hearing, take public comment, and provide a recommendation to City Council with any modifications to draft Zoning Ordinance amendments through a vote of the Planning Commission.

**ATTACHMENTS**

1. Public Hearing Notice
2. Zoning Ordinance Amendments to Modify Chapter 23E.16 Special Use Standards and Uses Permitted Tables in Applicable Zoning Districts
3. Planning Commission Staff Report (without attachments) – Oct. 7, 2020
4. Planning Commission Meeting Minutes – Oct. 7, 2020

**LINKS**

1. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19) - [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/06\\_June/Documents/2019-06-25\\_Item\\_37\\_Zoning\\_Ordinance\\_Modification.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx)



# PLANNING COMMISSION

---

## NOTICE OF PUBLIC HEARING

---

WEDNESDAY, FEBRUARY 3, 2021, 7:00 PM

### **Zoning Ordinance Amendments reclassifying Amusement Device Arcades as Commercial Recreation Centers and modifying regulations for Amusement Devices when incidental to a permitted use**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, February 3, 2021, beginning at 7:00 PM. The hearing will be conducted via Zoom** - see the Agenda for details, which can be found here: <https://www.cityofberkeley.info/PC/>

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

**PROJECT DESCRIPTION:** The proposed amendments to Berkeley's Zoning Ordinance (Title 23) respond to a 2019 referral from City Council to consider reducing the level of discretion for Amusement Device Arcades in the Elmwood Commercial (C-E) district. Recommended amendments address referral request and provide consistency across districts and uses that allow and reference Arcade Devices. Amendments allow Amusement Device Arcades to be regulated as Commercial Recreation Centers, increase the number of Amusement Devices allowed incidental to an established use, and remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school.

Changes to be considered are summarized below and apply to the Special Use Standards (BMC 23E.16), all Commercial Districts, the Mixed Use-Light Industrial District (MU-LI), and the Mixed Use-Residential District (MU-R):

- Remove Arcades from Uses Permitted Tables;
- Remove Special Provisions preventing Amusement Device Arcades from locating within 600 feet of a primary or secondary school;
- Change the maximum number of Amusement Devices allowed as an incidental use to a permitted use from three to five;
- Revise the level of discretion to allow Amusement Devices as an incidental use to a permitted with a Zoning Certificate.

Full text of the draft Zoning Ordinance amendments can be found on the Planning Commission's homepage: <https://www.cityofberkeley.info/PC/>

**LOCATION:** Affected districts include: all Commercial districts, the Mixed Use-Light Industrial District (MU-LI), and the Mixed Use-Residential District (MU-R). The zoning map is available online:

[https://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_General/Zoning%20Map%2036x36%20050120.pdf](https://www.cityofberkeley.info/uploadedFiles/IT/Level_3_General/Zoning%20Map%2036x36%20050120.pdf)

**ENVIRONMENTAL REVIEW STATUS:** The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that the proposed amendments to the Special Use Standards (Berkeley Municipal Code Chapter 23E.16), all Commercial Districts, the Mixed Use-Light Industrial District (MU-LI), and the Mixed Use-Residential District (MU-R) would not have significant effects on the environment because they would continue to allow only small scale activities within existing structures and would be regulated to include performance standards to protect the environment and local health, safety and welfare.

### **PUBLIC COMMENT**

---

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info). All materials will be made available via the Planning Commission agenda page online at this address: <https://www.cityofberkeley.info/PC/>

Correspondence received by 12 noon, eight days before this public hearing, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by 12 noon two days before this public hearing, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

### **COMMUNICATION ACCESS**

---

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

### **FURTHER INFORMATION**

---

Questions should be directed to **Paola Boylan**, at (510) 981-7418, or [pboylan@cityofberkeley.info](mailto:pboylan@cityofberkeley.info).

Chapter 23E.16  
 Special Use Standards

Sections:

- [23E.16.010](#) Hours of Operation
- [23E.16.020](#) Outdoor Uses
- [23E.16.030](#) Adult-Oriented Businesses
- [23E.16.040](#) Alcoholic Beverages
- [23E.16.060](#) Protected Uses
- [23E.16.070](#) Repealed by Ord. 7648-NS
- [23E.16.080](#) Non-Chartered Financial Institutions

Chapter 23E.36

C-1 General Commercial District Provisions

**23E.36.030 Uses Permitted**

<b>Table 23E.36.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	UP(PH)	Subject to additional requirements; see Section <a href="#">23E.16.030</a>
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	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
Commercial Recreation Center  Under 5,000 s.f.	  ZC	Outdoor use requires UP(PH)

<b>Table 23E.36.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Between 5,000--10,000 s.f.	AUP	
Over 10,000 s.f.	UP(PH)	
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments Under 1,500 s.f. Over 1,500 s.f.	ZC AUP	Food Service Establishments that exclusively sell food for offsite consumption are prohibited 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
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC*	
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	Subject to parking requirements; see Section <a href="#">23E.36.080</a>
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section <a href="#">23E.36.080</a>

<b>Table 23E.36.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
Uses Incidental to a Permitted Use		
Amusement Devices (up to five)	ZC	
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	

14

15 Chapter 23E.40

16 C-N Neighborhood Commercial District Provisions

17 **23E.40.030 Uses Permitted**

<b>Table 23E.40.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
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	ZC	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
Commercial Recreation Center  Under 3,000 s.f.  Over 3,000 s.f.	  AUP  UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	ZC*	
Entertainment Establishments	UP(PH)	Includes Nightclubs
Food Service Establishments  Under 1,000 s.f.  Over 1,000 s.f.	  ZC  AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	ZC*	

<b>Table 23E.40.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Hotels, Tourist	UP(PH)	Includes Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Includes Motion Pictures and Stage Performance
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
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)	

18

19 Chapter 23E.44

20 C-E Elmwood Commercial District Provisions

21 **23E.44.030 Uses Permitted**

<b>Table 23E.44.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Food and Alcohol Service, Lodging, Entertainment and Assembly Uses		
Adult-oriented Businesses	Prohibited	
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	ZC	For on-site consumption only
Commercial Recreation Center  Under 3,000 s.f.  Over 3,000 s.f.	AUP  UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments, including Nightclubs	Prohibited	
Food Service Establishments	AUP	Food Service Establishments must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	AUP	
Gyms and Health Clubs	AUP	

<b>Table 23E.44.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	Prohibited	
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
Food or Beverage for Immediate Consumption	UP(PH)	Treated as Food Service Establishment and subject to numerical limitations in Table <a href="#">23E.44.040</a> . Incidental Food and Beverage for Immediate Consumption off the premises is permitted as an Accessory Use of a Food Product Store.
Live Entertainment Unamplified Amplified	ZC Prohibited	
Manufacturing Uses	UP(PH)	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities Six or fewer persons Seven or more persons	UP(PH) ZC AUP	

<b>Table 23E.44.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
New Construction	UP(PH)	

- 22 Chapter 23E.48
- 23 C-NS North Shattuck Commercial District Provisions

24 **23E.48.030 Uses Permitted**

<b>Table 23E.48.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Food and Alcohol Service, Lodging, Entertainment and Assembly Uses</b>		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	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
Commercial Recreation Center		Outdoor use requires UP(PH)
Under 3,000 s.f.	AUP	
Over 3,000 s.f.	UP(PH)	
Dance, Exercise, Martial Arts and Music Studios	AUP	

<b>Table 23E.48.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Entertainment Establishments, including Nightclubs	UP(PH)	
Food Service Establishments Under 1,000 s.f. Over 1,000 s.f.	ZC AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
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	
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	

<b>Table 23E.48.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Food or Beverage for Immediate Consumption	UP(PH)	
Live Entertainment Unamplified Amplified	ZC UP(PH)	
Manufacturing Uses	Prohibited	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	Prohibited	

- 25 Chapter 23E.52
- 26 C-SA South Area Commercial District Provisions

27 **23E.52.030 Uses Permitted**

<b>Table 23E.52.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only

<b>Table 23E.52.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Alcoholic Beverage Service, including Bars, Cocktail Lounges and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service.  No service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue, except as incidental to seated food service; see Section <a href="#">23D.52.060</a> D1.
Commercial Recreation Center  Under 3,000 s.f.  Over 3,000 s.f.	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  Under 1,000 s.f.  Over 1,000 s.f.	ZC  AUP	Food Service Establishments requiring an AUP must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
Group Class Instruction for Business, Vocational or Other Purposes	ZC*	
Gyms and Health Clubs	ZC*	
Hotels, Tourist	UP(PH)	Including Inns, Bed and Breakfasts and Hostels
Motels, Tourist	Prohibited	

<b>Table 23E.52.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Theaters	UP(PH)	Including Motion Pictures and Stage Performance
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
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	

28

29 Chapter 23E.56

30 C-T Telegraph Avenue Commercial District Provisions

31 **23E.56.030 Uses Permitted**

<b>Table 23E.56.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
<b>Food and Alcohol Service, Lodging, Entertainment and Assembly Uses</b>		

<b>Table 23E.56.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	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 seated food service.
Commercial Recreation Center Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC 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 Under 1,500 s.f. Over 1,500 s.f.	ZC AUP*	
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)	

<b>Table 23E.56.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
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*	

32

33

34 Chapter 23E.60  
 35 C-SO Solano Avenue Commercial District Provisions

36 **23E.60.030 Uses Permitted**

<b>Table 23E.60.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
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	ZC	For on-site consumption only
Alcoholic Beverage Service (no Bars, Cocktail Lounges, & Taverns)	UP(PH)	Service of distilled alcoholic beverages may be approved for Food Service Establishments providing seated food service; see Section <a href="#">23E.60.060</a> D1
Commercial Recreation Center  Under 3,000 s.f.  Over 3,000 s.f.	  AUP  UP(PH)	Outdoor use requires UP(PH)
Dance, Exercise, Martial Arts and Music Studios	AUP	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments  Under 1,000 s.f.	  ZC	Food Service Establishments requiring an AUP must provide public notification of decision

<b>Table 23E.60.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements (if any)</b>
Over 1,000 s.f.	AUP	(NOD) within a 300-foot radius of the subject property.
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 <a href="#">23E.60.080</a>
Motels, Tourist	Prohibited	
Theaters	Prohibited	Including Motion Pictures and Stage Performance
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
Food or Beverage for Immediate Consumption	UP(PH)	
Live Entertainment		Also subject to the limitations under Section <a href="#">23E.60.060.D.2</a>
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	

Table 23E.60.030		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Wholesale Activities	AUP	

- 37 Chapter 23E.64
- 38 C-W West Berkeley Commercial District Provisions

39 **23E.64.030 Uses Permitted**

Table 23E.64.030		
Use and Required Permits		
Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
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 <a href="#">23E.16.030</a>
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	For on-site consumption only
Alcoholic Beverage Service	UP(PH)	Including Bars, Cocktail Lounges and Taverns. Also includes service of distilled spirits incidental to food service

<b>Table 23E.64.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Commercial Recreation Center  Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC  AUP  UP(PH)	Outdoor use requires UP(PH)
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  Under 1,500 s.f. Over 1,500 s.f.	ZC  AUP	Food service drive-through prohibited on San Pablo. See Section <a href="#">23E.64.040.C</a> and E. Also see Section <a href="#">23E.64.090.H</a> for special findings.
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 <a href="#">23E.64.080.F</a>

<b>Table 23E.64.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Motels, Tourist	UP(PH)	Subject to parking requirements; see Section <a href="#">23E.64.080.F</a>
Theaters, including Motion Pictures and Stage Performance	UP(PH)	
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	ZC  UP(PH)	See performance standards in Section <a href="#">23E.64.070.E</a>
Storage of Goods (over 25% of gross floor area)	AUP	

- 40 Chapter 23E.68
- 41 C-DMU Downtown Mixed Use District Provisions
- 42 **23E.68.030 Uses Permitted**

<b>Table 23E.68.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>		
Adult-Oriented Businesses	UP(PH)	Subject to additional requirements; see Section <a href="#">23E.16.030</a> Prohibited on Public Serving Frontages
Alcoholic Beverage Service of beer and wine incidental to seated food service	ZC	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.
Commercial Recreation Center  Under 5,000 s.f. Between 5,000--10,000 s.f. Over 10,000 s.f.	ZC 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:  Under 3,000 s.f. Over 3,000 s.f. Within the A.D.O.	ZC AUP AUP	Within the Arts District Overlay, see Section <a href="#">23E.68.040</a> See Alcoholic Beverage Service above.
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Subject to additional requirements; see Section <a href="#">23E.68.060.E</a>

<b>Table 23E.68.030</b>		
<b>Use and Required Permits</b>		
<b>Use</b>	<b>Classification</b>	<b>Special Requirements</b>
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC	Subject to additional requirements; see Section <a href="#">23E.68.060.E</a>
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	UP(PH)	
Theaters, including Motion Pictures and Stage Performance	AUP	
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
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	

- 43 Chapter 23E.80
- 44 MU-LI Mixed Use-Light Industrial District Provisions
- 45 **23E.80.030 Uses Permitted**

<b>Table 23E.80.030</b>				
<b>Use and Required Permits</b>				
<b>Uses</b>	<b>Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)</b>			<b>Special Requirements (if any)</b>
	<b>Under 20,000</b>	<b>20,000 – 30,000</b>	<b>More than 30,000</b>	
<b>Uses Incidental to a Permitted Use</b>				
Amusement Devices (up to five)	ZC			
Child Care Centers	ZC			Childcare for employees only
	AUP			When providing childcare for non-employees; subject to additional noticing requirements and findings in Section <a href="#">23E.80.090.I</a>
Food Service Establishment	AUP	Prohibited	Prohibited	
Live Entertainment and/or amplified music	UP(PH)			
Incidental Retail Sales of goods manufactured on site	AUP Up to 1,500 sq. ft.	UP(PH) 1,501 – 3,000 sq. ft.	Prohibited Over 3,000 sq. ft.	See limitations in Section <a href="#">23E.80.060.C</a>

- 46 Chapter 23E.84
- 47 MU-R Mixed Use-Residential District Provisions

48 **23E.84.030 Uses Permitted**

<b>Table 23E.84.030</b>		
<b>Use and Required Permits</b>		
<b>Uses</b>	<b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-oriented Businesses	Prohibited	
Alcoholic Beverage Service (incidental to Food Service only)	UP(PH)	
Commercial Recreation Center	Prohibited	
Dance, Exercise, Martial Arts and Music Studios	UP(PH)	
Entertainment Establishments	UP(PH)	Including Nightclubs and any establishments with live entertainment and/or amplified music
Food Service Establishments:		All food service establishments subject to findings under Section <a href="#">23E.84.090.F</a> . Quick and Full Service Restaurants subject to additional parking requirements; see Section <a href="#">23E.84.080.B</a>
	UP(PH)	

<b>Table 23E.84.030</b>		
<b>Use and Required Permits</b>		
<b>Uses</b>	<b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
Carry Out Food Service Stores	AUP if less than 5,000 sq. ft.	
Quick Service Restaurants	UP(PH)	
	AUP if less than 5,000 sq. ft.	
Full Service Restaurants	UP(PH)	
Group Class Instruction for Business, Vocational or Other Purposes	UP(PH)	
Gyms and Health Clubs	Prohibited	
Hotels, Tourist, including Inns, Bed and Breakfasts, and Hostels	Prohibited	
Motels, Tourist	Prohibited	
Theaters, including Motion Pictures and Stage Performance	Prohibited	
<b>Uses Incidental to a Permitted Use</b>		
Amusement Devices (up to five)	ZC	
Child Care Centers	ZC	Childcare for employees only
	AUP	When providing childcare for non-employees; subject

<b>Table 23E.84.030</b>		
<b>Use and Required Permits</b>		
<b>Uses</b>	<b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b>	<b>Special Requirements (if any)</b>
		to findings in Section <a href="#">23E.84.090.H</a> and public notification of a decision within a 300 foot radius of the subject property.
Food Service Establishment	AUP	
Incidental Retail Sales of goods manufactured on site	AUP	See limitations in Section <a href="#">23E.84.060.C</a>
Storage of Goods (over 25% of gross floor area)	AUP	





**Planning and Development Department**  
Land Use Planning Division

## **STAFF REPORT**

**DATE:** October 7, 2020

**TO:** Members of the Planning Commission

**FROM:** Paola Boylan, Assistant Planner  
Katrina Lapira, Assistant Planner

**SUBJECT:** Business Support Zoning Amendment Referrals – Amusement Device  
Arcades and Arts District Overlay Expansion

---

### **RECOMMENDATION**

Staff recommends that the Planning Commission discuss proposed modifications, provide feedback, and request staff draft Zoning Ordinance amendments for Planning Commission consideration.

### **BACKGROUND**

City Council has referred to the Planning Commission five referrals that support Berkeley businesses and bolster Berkeley's commercial districts. These referrals range in scope from broad suggestions to targeted requests, but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new businesses. This report analyzes and provides recommendations for two referrals:

- 1. Zoning Ordinance Modification for Elmwood Commercial Districts  
(Councilmember Droste, 6/25/19)**
- 2. Expanding the Downtown Arts District (Mayor Bates, 10/18/16)**

### **DISCUSSION**

The overarching goal of these referrals is to provide the flexibility needed by businesses to adapt to a changing marketplace. This section provides an overview of each referral item addressed, existing conditions, staff's analysis, and proposed modifications and recommendations for discussion.

#### **Amusement Device Arcades**

The Berkeley Municipal Code (BMC) currently prohibits Amusement Device Arcades<sup>1</sup> (Arcades) in the Elmwood Commercial district (C-E district). In June of 2019, City Council referred to the Planning Commission consideration of levels of discretion for Arcades in the C-E district, recommending that they be re-examined and relaxed (See Link 1). **Table 1** shows the permit specifications and thresholds recommended for the C-E district by the referral.

**Table 1: Permit Threshold Suggested for Arcades by the Referral for the Elmwood Commercial District**

Size Threshold (square feet)	Permit Required <sup>2</sup>
Under 3,000	ZC
Over 3,000	AUP

For a more comprehensive review of this referral, staff reviewed proposed thresholds and existing permit requirements for Arcades throughout all commercial and manufacturing districts in Berkeley. Findings, proposed modifications, and rationale are presented below.

### 1. Arcades as Commercial Recreation Centers<sup>3</sup>

- **Remove Arcades from Uses Permitted Tables and instead recognize and regulate the Use as a Commercial Recreation Center.** (*Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, and MU-R Districts*)

**Rationale:** As retail continues to shift towards online platforms, business models are evolving to provide activity-based experiences that attract customers. Commercial Recreation Centers (CRC) are non-theater establishments, where recreation facilities are offered or amusement devices are provided as a principal commercial activity. Providing clear guidance on establishing such businesses is one way the City has supported emerging

---

<sup>1</sup>**Amusement Device:** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug or token in any slot or receptacle attached to such machine or connected therewith, which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.

**Amusement Device Arcade:** An establishment which contains six (6) or more Amusement Devices. An Amusement Device Arcade is a Commercial Recreation Center irrespective of whether such machines are the principal commercial activity of an establishment.

<sup>2</sup> **ZC** – Zoning Certificate | **AUP** – Administrative Use Permit | **UP(PH)** – Use Permit (Public Hearing)

<sup>3</sup>**Commercial Recreation Center:** 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 may include, but is not limited to, bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses and amusement device arcades.

business models. In 2018, City Council adopted updated regulations that set thoroughly researched and studied thresholds for CRCs. Updates provided a simpler permitting process to CRCs by establishing a tiered permitting structure that requires lower levels of discretion for smaller businesses, thereby reducing start-up costs and shortening permitting timelines. **Tables 2 and 3** show the distinct thresholds established per General Plan designation, which coincide with various zoning districts according to purpose and intensity.

**Table 2: Avenue Commercial Permit Threshold for CRCs**

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

\*Outdoor uses require UP(PH)

**Table 3: Neighborhood Commercial Permit Threshold for CRCs**

Size Threshold (square feet)	Permit Required
Under 3,000	AUP
Over 3,000	UP(PH)

\*Outdoor uses require UP(PH)

In contrast to the rational permitting delineated for CRCs in the tables above, Arcades are defined by the BMC as a type of CRC, yet they are regulated separately—in some districts they are prohibited, in others they require a UP(PH) regardless of the proposed establishment's square footage. The defined terms for these two categories overlap significantly and reference each other. CRC regulations provide the flexibility requested in this referral, while continuing to provide safeguards for the surrounding community. In addition, CRC regulations provide a clear path to establishing businesses that offer activity based experiences. Staff's proposed modifications would extend the same path to Arcades. Therefore, staff recommends recognizing and regulating Arcades as CRCs.

- **Remove Special Provisions preventing Amusement Device Arcades from locating within a radius of 600 feet of any primary or secondary school.** (*BMC Section 23E.16.050*)

Rationale: Special Provisions<sup>4</sup> were set in place in the 1990s to prevent Amusement Device Arcades from establishing too close to primary and

---

<sup>4</sup>**Special Provisions** - No Amusement Device Arcade shall be established within a radius of six hundred (600) feet of any primary or secondary school. This applies to all districts and permits.

secondary schools. However, in the 21st century, the advancement of technology has brought gaming opportunities to people's households and fingertips through computers, gaming consoles, and cell phones among other devices. The City of Berkeley is among one of two cities with this restriction, and of the two, it is twice as strict by requiring a 600 ft. radius versus 300 ft. (City of San Diego) (See Attachment 3). Removing this requirement is not of concern to the Berkeley Police Department and will provide a smooth transition to recognizing Arcades as CRCs.

## **2. Amusement Devices Incidental to a Permitted Use**

- **Change the maximum number of Amusement Devices allowed as an incidental use to a permitted use from three to five.** (*Modify Uses Permitted Tables in zones C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-DMU, MU-LI, and MU-R Districts*)

Rationale: Current regulations allow up-to three Amusement Devices incidental to an established use with either an AUP or a UP(PH), depending on the district. At the same time, Arcades are defined as establishments with six or more Amusement Devices - creating an arbitrary gap between the two use types. Therefore, staff recommends allowing up to five Amusement Devices as an incidental use to a permitted use, which would provide consistency throughout the Zoning Ordinance and set a threshold similar to our neighboring City of Albany (See Attachment 3).

- **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC).** (*Modify Uses Permitted Tables in zones C-1, C-T, C-W, C-DMU, MU-LI, and MU-R Districts*)

*(See discussion below)*

- **Revise the level of discretion for Amusement Devices as an incidental use to a permitted use from a Use Permit Public Hearing (UP(PH)) to a Zoning Certificate (ZC).** (*Modify Uses Permitted Tables in zones C-N, C-E, C-NS, C-SA, and C-SO Districts*)

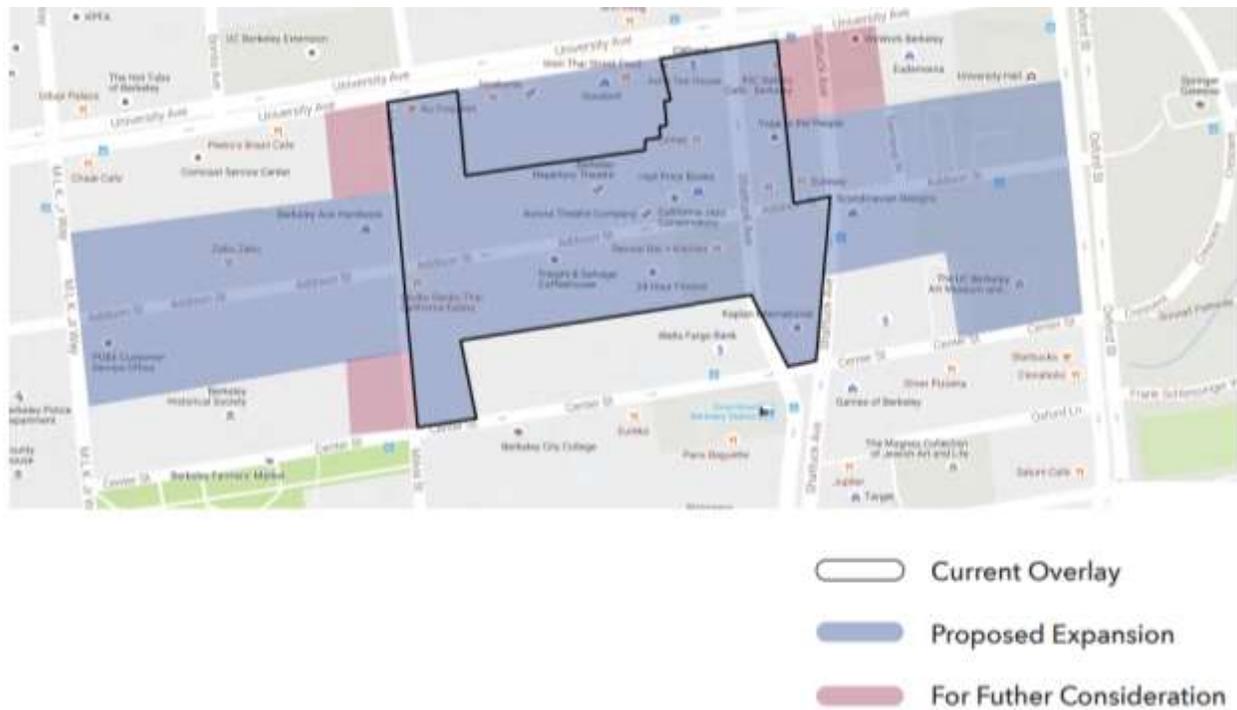
Rationale: Current regulations require businesses in Berkeley to obtain an AUP or UP(PH), depending on the district, to add a limited number of Amusement Devices as an incidental use. In a time when emerging business models focus on creating activity-based experiences for customers, Amusement Devices can provide an attractive service to patrons. The proposed modification would lower levels of discretion for up to five devices to a ZC, bringing Berkeley into alignment with other cities in order to retain and attract existing and new businesses (See Attachment 3).

### **Downtown Arts District Overlay**

Established in 2000, the purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities, retail, and other commercial uses that generate pedestrian

vitality in the downtown to encourage a broader economic revitalization of the area. Since that time, several theater arts, fine dining, and related uses have become established or expanded in the area. In 2016, City Council asked the Planning Commission to explore expanding the existing physical boundaries of the ADO to include all buildings with street frontage along Addison Street from Martin Luther King (MLK) Way through Oxford Street and portions along University Avenue, Shattuck Avenue, and Center Street (See Link 2 and **Figure 1**).

**Figure 1.** Arts District Overlay



Source: *Expanding the Downtown Arts District* (Mayor Bates, 10/18/16)

Staff reviewed the overlay boundaries and allowable uses to propose recommendations that meet the purposes of the ADO and the underlying zoning districts. Findings, recommendations, and rationale are presented below.

### 1. Maintain the existing boundaries of the ADO.

**Rationale:** Staff's proposal to maintain the existing boundaries takes into consideration the role of the ADO as a development tool, the pattern of existing uses, and development constraints in the areas within the referral's proposed expanded boundary.

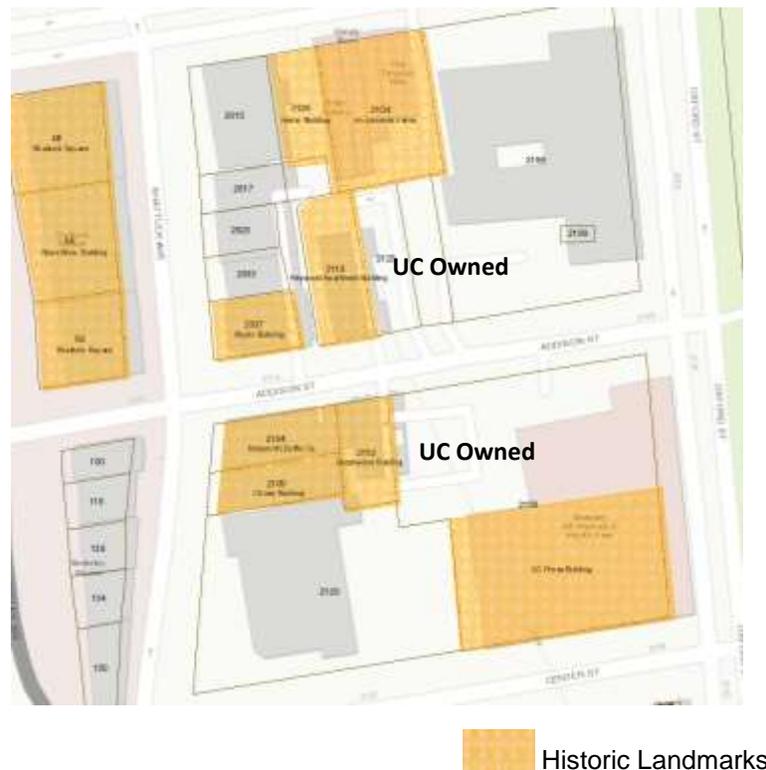
The Downtown Mixed-Use (C-DMU) District underlies the ADO. The primary zoning distinction between the C-DMU and the ADO is the regulation placed on ground floor uses. Currently, the ADO requires an AUP for ground floor office uses and Food Service Establishments focused on offsite consumption. The C-DMU requires a ZC for these same uses. The proposed expansion would incorporate more of the C-DMU, and given the existing provisions, would create legally non-

conforming uses in existing ground floor spaces with office uses and take-out only Food Service Establishments.

**Expansion from Milvia Street to MLK Way** - The area along Addison Street, from Milvia Street to MLK Way, is primarily built out, with new mixed-use developments and existing office buildings that support small residential and food service uses. Along this stretch, about 50% of the ground floor street frontage is dedicated office space. Under the ground floor restrictions of the ADO, these office spaces would be subject to AUP requirements if a new tenant were to require a change in use to the previously described food service or office use. Given the limitations of existing spaces, this proposal may create an unnecessary burden.

**Expansion from Shattuck to Oxford and along University Avenue** - The referral’s proposed boundary expansion includes new cultural institutions like the UC Theatre Music Hall and the Berkeley Arts Museum and Pacific Film Archive (BAMPFA). However, a number of parcels along Addison Street, from Shattuck to Oxford Street, are owned by the University of California (UC) and are thus not subject to the City’s zoning regulations. In addition, the referral’s proposed expanded area includes several historic landmarks that already require additional review as part of the development process, shown in the figure below in orange. Added ground floor requirements imposed by the ADO could further complicate and deter the redevelopment of these historical lots. For these reasons, expanding the ADO to include this stretch of University Avenue and Addison Street would be ineffective in guiding development in this area.

**Figure 2.** Addison Street - UC Owned Parcels and Historic Landmarks



- 2. Remove the provision requiring an Administrative Use Permit (AUP) for Food Service Establishments that primarily provide food for offsite consumption in the Downtown Arts District Overlay** (*Modify BMC Sections 23E.68.030 and 23E.68.040*)

Rationale: Food Service Establishments in the C-DMU are regulated by a tiered permitting system based on gross square footage. As previously mentioned, the ADO places additional restrictions on Food Service Establishments. These restrictions could create barriers to prospective businesses and are also incompatible with the model under which current businesses are operating, as a result of the COVID-19 pandemic. Restaurants have shifted towards take-away models to keep afloat during the public health crisis, regardless of whether their previous primary focus was to be a sit-down or take-away establishment. Removing the additional restriction and treating all Food Service Establishments consistently throughout the C-DMU accommodates the ever-changing nature of the food service industry and simplifies the review process for prospective businesses.<sup>5</sup>

- 3. Explore programmatic incentives adopted by other cities to encourage more art- and culture-focused establishments to locate within the existing ADO.**

Rationale: There is little distinction between provisions in the ADO and the C-DMU in the Zoning Ordinance. To encourage the location of cultural institutions and supportive services within the ADO, a variety of programmatic incentives could be explored for adoption in the future. The City of Oakland published a report that outlines strategies used by other jurisdictions across the country to strengthen arts and cultural districts. Land Use Planning staff will share this report with Berkeley's Office of Economic Development and will support efforts to bolster the ADO through these types of strategies in the future (See Link 3).

## NEXT STEPS

Based on the Planning Commission's feedback, staff will draft Zoning Ordinance amendments for Planning Commission's consideration.

## ATTACHMENTS

1. Planning Commission Staff Report (without attachments) - July 1, 2020
2. Planning Commission Meeting Minutes - July 1, 2020
3. Matrix of Arcade Regulations

## LINKS

---

<sup>5</sup> In 2018, the zoning ordinance was amended and largely removed the distinction among food service uses. This regulation is anomalous.

1. Zoning Ordinance Modification for Elmwood Commercial Districts (Councilmember Droste, 6/25/19) - [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/06\\_June/Documents/2019-06-25\\_Item\\_37\\_Zoning\\_Ordinance\\_Modification.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/06_June/Documents/2019-06-25_Item_37_Zoning_Ordinance_Modification.aspx)
2. Expanding the Downtown Arts District (Mayor Bates, 10/18/16) - [https://www.cityofberkeley.info/Clerk/City\\_Council/2016/10\\_Oct/Documents/2016-10-18\\_Item\\_24\\_Expanding\\_the\\_Downtown\\_Arts.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_24_Expanding_the_Downtown_Arts.aspx)
3. City of Oakland - Arts and Culture Research Compilation (2017) - <https://cao-94612.s3.amazonaws.com/documents/Art-Culture-Best-Practices-and-Case-Studies-March-2017.pdf>



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
October 7, 2020**

The meeting was called to order at 7:03 p.m.

**Location:** Virtual meeting via Zoom

**1. ROLL CALL:**

**Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Steve Martinot, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

**Commissioners Absent:** Mary Kay Lacey (excused absence).

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, and Paola Boylan.

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

**3. PUBLIC COMMENT PERIOD:** 1

**4. PLANNING STAFF REPORT:**

- None

**Information Items:**

- None

**Communications:**

- None

**Late Communications:** *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

**5. CHAIR REPORT:**

- None

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- None

## 7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wrenn/Beach) to approve the Planning Commission Meeting Minutes from September 30, 2020 with amendments to lines 60 and 68.

Ayes: Beach, Kapla, Krpata, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: Martinot. Absent: Lacey. (8-0-0-1)

## FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:

- None

## AGENDA ITEMS

### 9. Discussion: ***Business Support Zoning Amendment Referrals – Amusement Device Arcades and Arts District Overlay***

Staff shared research and findings associated with the two businesses support referrals described above with the Planning Commission. After staff's presentation, the Commission asked staff to propose amendments based on the recommendations discussed.

**Public Comments: 0**

**Members in the public in attendance: 2**

**Public Speakers: 1 speakers**

**Length of the meeting: 1 hours and 13 minutes**

**Communication**

---

**From:** Lapira, Katrina  
**Sent:** Friday, January 22, 2021 4:31 PM  
**To:** Lapira, Katrina  
**Cc:** Pearson, Alene  
**Subject:** Preventing Displacement + Creating Homeownership Town Hall (Jan 27) and Surveys  
**Attachments:** 2021-01-23 Staff - Surveys - TOPA Townhall.pdf

Good afternoon Commissioners,

Attached is a communication from the Partnership for the Bay's Future Fellow, Anna Cash, with information about the upcoming town hall on the TOPA Proposal and links to the following surveys –

- [Affordable Housing Preference Policy](#)
- [Right to Stay, Right to Return](#) (Healthy Black Families)

Thanks,

**Katrina Lapira** (*she/ her*)

Assistant Planner

City of Berkeley | Land Use Planning Division

[klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info)

## Communication

---

**From:** Housing Advisory Commission  
**Sent:** Thursday, January 21, 2021 5:09 PM  
**Subject:** Preference Policy Surveys & January 27th TOPA Forum

Commissioners,

Thank you so much for the opportunity to present to you yesterday evening. I'm writing to share links for the [City survey on preference policy](#), and [Healthy Black Families' survey](#) on right to return/right to stay, and individual experiences with displacement (Ayanna Davis spoke to this second survey).

Additionally, please find an invitation below to the TOPA forum, hosted by the Yes to TOPA coalition and the Mayor's Office, taking place this coming **Wednesday January 27<sup>th</sup> 5:00-6:30pm** (details below and flyer attached).

Preventing Displacement & Creating Homeownership Opportunity:  
A Community Conversation on Berkeley's Tenant Opportunity to Purchase Act (TOPA) Proposal  
**Wednesday, January 27<sup>th</sup>, 5:00pm - 6:30pm**  
Zoom link:[tinyurl.com/TOPAForum](https://tinyurl.com/TOPAForum)(call-in and streaming info on flyer)  
RSVP: Anna Cash,[acash@policylink.org](mailto:acash@policylink.org)

All the very best,

Anna

Anna Cash (She/Her)

[Partnership for the Bay's Future](#) Fellow

City of Berkeley Health, Housing & Community Services Department

2180 Milvia Street, 2nd Floor, Berkeley CA 94704

O: (510) 981-5419

C: (510) 663-4385

[acash@cityofberkeley.info](mailto:acash@cityofberkeley.info)

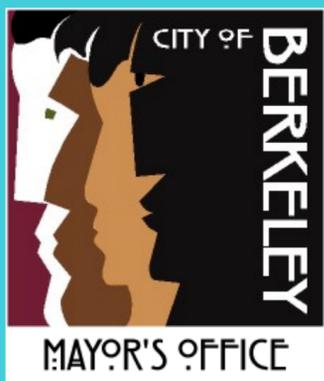
# Preventing Displacement & Creating Homeownership Opportunity:

## A Community Conversation on Berkeley's Tenant Opportunity to Purchase Act (TOPA) Proposal

### SPONSORS



Yes 2 TOPA Coalition



### PANELISTS

**Mayor Jesse Arreguín**  
Berkeley Mayor

**Saki Bailey**  
Bay Area Community Land Trust

**Lela Logene Butler**  
Realtor

**Richard Hurlburt**  
Broker, Impact Commercial

**Tania Jackson**  
Development consultant on DC TOPA,  
Occupant of DC TOPA-created coop

**Alexes Link**  
10th St. Resident

**Seema Rupani & Hewot Shankute**  
East Bay Community Law Center

### MODERATOR

**Pastor Michael Smith**  
McGee Avenue Baptist Church,  
Berkeley Black Ecumenical  
Ministers Alliance

**JOIN BY ZOOM:**  
[TINYURL.COM/TOPAFORUM](https://tinyurl.com/topaforum)  
PASSCODE: 227355

**STREAM:**  
[TINYURL.COM/BERKELEYMAYOR](https://tinyurl.com/berkeleymayor)

**CALL IN:**  
669 900 6833

**MEETING ID:**  
835 2189 3639  
**PASSCODE:**  
227355

**WEDNESDAY  
JANUARY 27  
5:00PM - 6:30PM**

**POLICY DETAILS:  
[WWW.YES2TOPA.ORG](http://WWW.YES2TOPA.ORG)**