

## Questions and Answers about Cannabis

Am I at risk for imbibing pesticide-laden cannabis? How easy is it for kids to buy cannabis? Will I see big billboards advertising recreational cannabis? How many cannabis businesses will I see in my neighborhood?

The city of Berkeley, the Berkeley Cannabis Commission, and the state of California have all been working very hard to ensure that cannabis is free of harmful toxins, that it is very difficult for youth to purchase, and that it is not advertised overtly. The number of businesses selling cannabis is currently limited to 6.

### **Cannabis is Tested to Ensure Public Health**

Rigorous regulations require growers and companies to engage in safe production practices. With the new state regulations in place, all cannabis is tested by a third party - no grower, manufacturer, or distributor may test their own product. They must employ a separate and independent testing service to measure the levels of pesticides and other harmful substances in the cannabis. Only if the levels are consistent with California state approved levels will the cannabis flower and or related cannabis products be approved for consumer sale.

### **Children will not have Access to Cannabis**

The Berkeley Cannabis Commission is in strong favor of stringent regulations that ensure no persons under the age of 21 will have access to Cannabis unless prescribed by their doctor. Previously successful government issued identification mandates will be put in place and recreational cannabis will only be legal for those 21 years of age or older to purchase. Furthermore, cannabis businesses will be required to have minimal signage, no ostentatious symbology, and no billboards within the Berkeley city limits.

### **Advertising is Restricted to the Facts**

In restricting what can and cannot be advertised to the public, California and Berkeley are taking steps to ensure that those who choose to use cannabis, recreationally or medicinally, are being presented with factual information to allow them to make decisions that are best for their personal health and well-being. The information in retail ads will be truthful and appropriately substantiated.

### **Buffers Zones Required Between Cannabis Businesses**

Cannabis retailers (the only cannabis businesses publicly accessible) will need at least a 600 foot zone between themselves and any school from kindergarten through 12th grade.

### **Number of Retail Stores is Limited**

Currently Berkeley has only licensed 6 retail storefronts for the City of Berkeley.

## **Cannabis Rules At A Glance**

1. No one under the age of 21 will be allowed to purchase recreational cannabis.
2. Rigorous testing for pesticides and other toxins will be undertaken for all cannabis products prior to reaching the consumer.
3. Cannabis billboards will be prohibited in Berkeley.
4. All Advertising shall be truthful and appropriately substantiated.
5. No retail cannabis stores shall be located within ~2 city blocks (600 feet) of a school providing instruction in kindergarten or any grades 1 through 12.
6. No alcohol or tobacco products shall be sold on the same premises as a cannabis business.

Tue 10/2/2018 4:09 PM

To: Alene Pearson

From: Betsy Thagard <betsythagard@gmail.com>

Re: 10/3 Planning Commission meeting Item 12: Auto Sales/Service in C-SA District

Dear Berkeley Planning Commissioners,

As a resident of South Berkeley, I am writing to urge you to ban further automobile sales and service businesses along the South Shattuck/Adeline Corridor.

That urban corridor -- with its many transit options -- should instead be devoted to high-density transit-oriented housing development.

It is absurd to allow automobile sales and service establishments in an area where many people could choose to live without cars -- especially in a city that has a severe housing shortage and way too many automobiles!

Please ban automobile sales and service establishments in our neighborhood, and instead encourage the development of multi-story housing for all income levels. We need way more housing and far fewer cars.

Thank you,

Betsy Thagard  
1937 Carleton Street, Unit D  
Berkeley, CA 94704

**From:** Louise Rosenkrantz [<mailto:louiseandgene@sbcglobal.net>]  
**Sent:** Monday, October 01, 2018 12:53 PM  
**To:** Planning Dept. Mailbox <[planning@cityofberkeley.info](mailto:planning@cityofberkeley.info)>  
**Subject:** Council Referral on Auto Sales , Agenda Item

To the Planning Commission,

I am pleased to see that the agenda for the October 3 meeting includes the Council Referral on Auto Sales in the C-SA District. I live in this district, but will be out of town for this meeting.

If I were able to attend the meeting I would use my speaking time to remind the Planning Commission that the South Berkeley Area Plan includes auto sales and repair in a list of undesirable uses that the City should not encourage. As it stands we already have multiple car dealerships in the neighborhood, One of my concerns is the way these businesses already encroach on the public space in the South Shattuck area. For example, the McKeivitt dealership uses all of the parking and grassy median on Shattuck between Derby and Ward as if it were their private lot and this neighborhood photo shows a Honda car carrier parking on 2100 block of Stuart Street.



While neighbors have repeatedly brought these and similar concerns to the attention of traffic enforcement we have seen no changes.

It is my hope that the Planning Commission can review the situation of car dealers and repair shops in the C-SA District and send back to council a resolution that confirms and supports the South Berkeley Area Plan.

Louise Rosenkrantz

Friends of Adeline  
*An organization of residents and neighbors in South Berkeley*  
(510) 338-7843 ☎ friendsofadeline@gmail.com

September 25, 2018

To the Members of the Planning Commission –

*Friends of Adeline* commends you for having the July 18, 2018 Planning Commission meeting, concerning the Adeline Corridor, at the South Berkeley Senior Center. We were looking forward to hearing about the progress of the Adeline Corridor project since it is going to have an enormous impact on the community in which we live.

After more than 3 years of workshops, community gatherings, discussions on both the community and small group levels we were hoping to see what has been developed. We were, however, both angered and saddened by the report presented by staff about this project. The presentation showed a complete disregard for what the community has repeatedly called for in the plan, which demonstrated an arrogance towards the community and/or incompetence of the staff. After 3 years and \$750,000 we were presented with no plans, no ideas, no indication to what we could look forward.

The staff, in its report, could not even say that after all this time and meetings – and we, *Friends of Adeline*, participated in almost all of them – that what was stated by the community most clearly was the demand that low and extremely low income (truly affordable) housing be a primary focus of what is to be developed. They could not say that the community demanded an end to the displacement of residents and an end to the assault on the African American community in South Berkeley.

While the almost total disregard of what the community was saying made us angry the fact that once again the voices of the South Berkeley community were being ignored it apparently had no effect on most of you, the members of the Planning Commission. We did not hear enough voices raised to criticize the staff for its incompetence in having nothing ready to present to the community about the plan. We heard almost nothing said as to why staff has not heard the demands for housing in which people in our community can afford to live or make it possible for former South Berkeley residents to return to the community that many have called home for generations. The City of Portland, OR, Housing Bureau has developed a Preference Policy that gives preference to housing applications from current or former residents of those areas or their descendants,

We can only assume that the hope of the staff, and perhaps the commission, is that we all go away. More developers are presenting plans to the city, in the Adeline Corridor, for more market rate, high income housing with minimal (if any) on site low income units. They want to move ahead before a plan for the corridor is put in. Staff seems to be aiding them as they try to develop whatever is now available. No one on city staff is helping the neighborhoods fight against these attempts to take over our community.

We urge the Planning Commission to take seriously its role as representative of all the citizens of Berkeley. It should hear and respond to the community as part of its responsibility to City Council. It should develop ideas of its own to recommend to City Council with respect to those issues the Council refers to it and others, working with staff as a resource and for assistance toward that end.

We want the Planning Commission to recommend to the City Council that it require the Planning Department to have at least one employee whose job it will be to work with the community and represent the community in its plans and projects, such as the Adeline plan and other development projects, with which the Planning Department deals.

Make it possible for us to work together in the development of this area.

*Letter approved by Friends of Adeline Organizing Group 9/24/2018*

Wed 10/3/2018 8:12 AM

To: Alene Pearson

Re: Support for Zoning Ordinance Amendments that Support Small Businesses

Dear Planning Commission Secretary Alene Pearson and Planning Commissioners:

I unfortunately am not able to make the Planning Commission meeting/hearing this evening.

However, I would like to express our support of the Zoning Ordinance Amendments that Support Small Businesses.

It is important that we simplify and streamline the permitting process for new business in Berkeley. Time again we hear from new businesses that they cannot wait for long approval process, and/or almost go bust before they open for business in Downtown Berkeley. In the quick changing age of the Internet we need to have clear simple processes to attract new businesses and stay competitive with other cities, while at the same time protecting the public interest of the entire Berkeley Community.

Thank you for your consideration on this matter.

Sincerely,

John Caner, CEO  
Downtown Berkeley Association  
2230 Shattuck Ave., Suite C  
Berkeley CA 94704  
510.549.2230 x12  
[jcaner@downtownberkeley.com](mailto:jcaner@downtownberkeley.com)



**From:** Klein, Jordan  
**Sent:** Tuesday, October 02, 2018 11:27 AM  
**To:** 'Chris Schildt'  
**Cc:** Pearson, Alene; Hollander, Eleanor; Slaughter, Kieron  
**Subject:** RE: Supporting small businesses packet re: anti-displacement and supports for women and minority-owned businesses?

Hi Chris,

Thanks for reaching out! I'm glad to brief you on all of the special initiatives and baseline services in OED's work plan that focus on supporting existing small businesses in Berkeley. I'm available today from 1:30-2:30 or 3:30-4, or let me know some times that work for you. Here is an overview (and Alene, perhaps it makes sense to share this communication with the entire commission):

- The zoning ordinance amendments that are going to the Planning Commission on Wednesday are in fact an essential tool for helping prevent displacement and closure of existing, independently-owned small businesses in Berkeley. We've heard directly from small businesses – and have observed countless cases that substantiate their feedback – that restrictive land use controls for small businesses are often a significant barrier to expanding, relocating, or opening a second location. Larger, well-capitalized businesses, including national chains, are more able to weather Use Permit and AUP processes, whereas it is much more difficult for a locally-owned business to carry the extra costs (e.g., rent, consultants).
- We're piloting two new small business retention programs, both designed to serve businesses that are at risk of displacement or closure. They are both launching this month.
  - **Uptima Business Bootcamp** and **Bay Area Organization of Black-Owned Businesses** are partnering to provide technical assistance to enhance the profitability and sustainability of existing Berkeley businesses. We'll be specifically outreaching to black-owned businesses in Berkeley about this program (although other businesses are also eligible). Services will include marketing, real estate & leasing, business planning, access to capital, and other topics that are customized to meet the business owners' specific needs. We hope to serve at least 20 businesses over two years.
  - **Project Equity** will be facilitating conversion of existing businesses with traditional ownership structures to worker-owned cooperatives. With the 'silver tsunami' underway, many businesses owned by Baby Boomers may close upon the owners' retirement. The goals of this program include increasing and preserving business sustainability and longevity, while also improving economic opportunities for workers.
- We're engaging a marketing firm to develop and implement a marketing campaign to highlight Berkeley's independently-owned retail and services businesses. That should launch in early 2019.
- We're partnering with the Berkeley Chamber to produce a series of events for locally-owned businesses to (1) educate businesses on strategies to boost revenues, enhance marketing, and access new markets, and (2) create networking opportunities for small businesses. This will include a 'shop local' holiday gift fair in early December.
- We're improving our communications with small businesses by producing new tools (e.g., updated brochures and toolkits), launching an annual survey ([currently open](#), through October 15!), and hosting an annual Small Business Forum. The goal of this work is to increase businesses' awareness of OED as a resource (which in turn relates to business sustainability and preventing commercial displacement). I think it's been working, as we've been seeing an uptick in inquiries, including a bunch of recent applications to our loan fund!
- One of OED's core functions is to provide case management and technical assistance to business owners, including real estate support. We've expanded our capacity in that regard over the past year as our small business specialist has shadowed permit service center staff and other City staff responsible for regulating small businesses.



We are certainly sensitive to the risks of commercial displacement. We've spent time studying strategies that other communities are undertaking, and haven't found any silver bullets yet! The zoning ordinance modifications that the commission is reviewing tomorrow is one part of a many-pronged strategy to support our local businesses.

I've had preliminary discussions with Council members about other policy strategies (vacancy taxes or fees, formula retail controls) but there's nothing imminent.

Again, happy to talk more. We could also do a follow-up presentation on all of this work, if it's something the commission is interested in.

Regards,  
Jordan

-----  
Jordan Klein  
Economic Development Manager  
Office of Economic Development, City of Berkeley

2180 Milvia Street, Fifth Floor  
Berkeley, CA 94704  
Phone: (510) 981-7534  
jklein@cityofberkeley.info

**From:** Chris Schildt [mailto:cschildt@gmail.com]  
**Sent:** Monday, October 01, 2018 5:57 PM  
**To:** Klein, Jordan <JKlein@cityofberkeley.info>  
**Cc:** Pearson, Alene <apearson@cityofberkeley.info>  
**Subject:** Supporting small businesses packet re: anti-displacement and supports for women and minority-owned businesses?

Hi Jordan,

I just read through the Planning Commission packet for this Wednesday. When we talked on the phone earlier this summer, you had mentioned that these zoning ordinance amendments were happening as a part of the broader packet of small business supports that ED is working on. Can you share with me and the commission what all will be in this larger packet?

My concern is that these changes will make it easier to open or expand a storefront in Berkeley (which is a good thing), but I don't see anything in the analysis on what sorts of anti-displacement protections and supports for minority- and women-owned businesses will complement these zoning ordinance changes. It would be helpful if you could provide more information about how these issues will be addressed in the larger packet going to the city council.

I'll be around tomorrow afternoon if you want to discuss.

Thank you!  
Chris

Mobile: 408-499-1394

**From:** Laurie Rich <laurie@browercenter.org>  
**Sent:** Thursday, September 27, 2018 11:42 AM  
**To:** Pearson, Alene  
**Subject:** Letter of Support

Dear Alene,

I'm writing to express my support for the modifications to the zoning ordinances for small businesses submitted by Jordan Klein and Timothy Burroughs. I have heard, countless times, how difficult it is to get permitting in Berkeley and therefore, many new small business don't even try. We are losing these smaller organizations, often independently owned and operated, to other cities that have more streamlined, simpler process.

I encourage the Planning commission to pass these improvements!

Laurie

Laurie Rich  
*Executive Director*

**David Brower Center**

2150 Allston Way, Ste 100, Berkeley, CA 94704

[laurie@browercenter.org](mailto:laurie@browercenter.org) • t 510 809 0900 x117 • f 510 809 0909

[www.browercenter.org](http://www.browercenter.org) • fb [DavidBrowerCenter](https://www.facebook.com/DavidBrowerCenter) • tw [@BrowerCenter](https://twitter.com/BrowerCenter)

On view in the Hazel Wolf Gallery September 21, 2018 through Feb 14, 2019: [Art/Act: Brian Skerry - SHARKS](#)



Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111-4710  
P: 415.262.5100 F: 415.262-5199

Linda C. Klein  
415.262.5130  
lklein@coxcastle.com

File No. 072976

October 3, 2018

VIA E-MAIL [APEARSON@CITYOFBERKELEY.INFO](mailto:APEARSON@CITYOFBERKELEY.INFO)

Planning Commission  
c/o Ms. Alene Pearson, Secretary, Planning Commission  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

**Re: October 3, 2018, Planning Commission Agenda Item No. 12 – Auto Sales in the C-SA District**

Dear Planning Commissioners:

I write on behalf of my client, Berkeley Honda, which has been a fixture on Shattuck Avenue for over 40 years. This letter addresses two issues: (1) the City's failure to provide Berkeley Honda notice of the discussion of the Auto Overlay, and (2) misstatements in a communication from Mr. Martinot about Berkeley Honda.

First, Berkeley Honda received no notice of the October 3 discussion regarding the Auto Overlay in the C-SA Zone even though it is the only business mentioned in the request for revisions to the Auto Overlay. Berkeley Honda has requested notice of all hearings related to it specifically and the Auto Overlay generally and is disturbed by the City's continued failure to provide such notice despite assurances that notice would be provided. By this letter, Berkeley Honda renews its request for notice.

Second, Mr. Martinot's email to you contains numerous misstatements about Berkeley Honda that must be corrected. These are addressed below:

**Scope of City Council Referral.** Contrary to Mr. Martinot's claim, the City Council did not refer a "new zoning overlay for south Berkeley" to the Planning Commission. The City Council asked the Planning Commission to consider revisions to the zoning ordinance that would prohibit new auto uses, while protecting existing auto uses, including allowing existing auto dealers to update vehicles, equipment, and buildings, particularly where the updates would help the City achieve its Climate Action goals. (Please refer to the videos of the June 12 and July 10, 2018, City Council hearings.) Because the City Council recommended protecting existing dealerships already in the South Shattuck area, Mr. Martinot's explanation that action is urgently needed to address neighborhood issues with existing dealerships is illogical.

Ms. Alene Pearson  
October 3, 2018  
Page 2

**Berkeley Honda's Operations.** Mr. Martinot states Berkeley Honda has “a larger operation than they originally outlined for the City Council and the ZAB, and are looking to expand.” Not so. Berkeley Honda's operations are exactly as disclosed to the City Council, Planning Commission, and ZAB over the course of approximately 18 public meetings and hearings. Berkeley Honda has NO plans to expand its footprint. If, for some reason, Berkeley Honda forms plans in the future to expand, it would need a use permit revision, which would be the time for the City to consider neighborhood concerns about such an issue.

**Opportunities for Public Input.** Also incorrect is the claim that the neighborhood was “never given a chance to voice its concerns publicly or debate the issue when the present overlay was under consideration.” The administrative record of the City's adoption of the Auto Overlay belies that claim. As the record shows, the City properly noticed the zoning action, held neighborhood meetings and public hearings on the Auto Overlay, and then, after considering neighborhood and staff recommendations over the course of two years, adopted the Auto Overlay. A succinct summary of the multiple opportunities residents had to voice concerns about the Auto Overlay is contained in the July 2, 2013, City Council Staff Report.

Further, both Berkeley Honda and the City have had numerous meetings with neighbors to address neighbor concerns both before and after Berkeley Honda's project approval. Because it is committed to being a good neighbor, Berkeley Honda made numerous changes to its project in response to neighbor requests, including redesigning the dealership circulation and limiting the location of test drives, and agreed to follow up studies regarding vehicle ingress operations and noise. And despite continued harassment by a handful of neighbors hoping to catch Berkeley Honda making a mistake, Berkeley Honda has provided evidence to the City of its scrupulous compliance with its use permit conditions, which it takes very seriously. Berkeley Honda also takes safety seriously and is concerned that the few neighbors who stalk the dealership are creating unsafe conditions for Berkeley Honda's vendors and customers.

\* \* \*

Berkeley Honda wants to quietly and successfully operate its business as it has on Shattuck Avenue for over 40 years, without continued drama and disruptions. Accordingly, Berkeley Honda asks that if the Planning Commission considers an amendment to the Auto Overlay, it protects Berkeley Honda and other existing auto dealerships, consistent with City Council direction and City policies supporting existing businesses, by allowing them to continue as conforming uses in their current locations.

Sincerely,



Linda C. Klein

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
Tuesday, October 18, 2016  
7:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 7:03 p.m.

**Present:** Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington, Bates.

**Absent:** None.

**Ceremonial Matters:**

1. Recognition of Local Filmmakers Alan Snitow and Deborah Kaufman
2. Recognition of the Commission on the Status of Women Honorees

**City Manager Comments:** None

**Public Comment on Non-Agenda Matters:** 10 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 9 speakers.

**Consent Calendar**

**Action:** M/S/C (Bates/Worthington) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

- 37. Referral Response: Modify Numeric Limitations (“Quotas”) in the Elmwood (C-E) Commercial District; Amending BMC Chapters 23E.44 and 23F.04**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Chapters 23E.44 and 23F.04 of the Berkeley Municipal Code to modify numeric limitations (“Quotas”) in the Elmwood (C-E) Commercial District.  
**Financial Implications:** None  
Contact: Carol Johnson, Planning and Development, 981-7400  
**Action:** 1) Moved to Consent Calendar. Adopted first reading of Ordinance No. 7,513–N.S. revised to retain the square footage limitations in Table 23E.44.040. Second reading scheduled for November 1, 2016.  
2) Requested that the City Manager review the square footage limitations in Section 23E.44.040 and return with options for modification.  
Vote: Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – Maio.
- 38a. Tiny Homes as a Strategy to Increase Housing for the Homeless in Berkeley**  
**From: Homeless Commission**  
**Recommendation:** Adopt a Resolution or other recommendation for the following purposes: 1) to support the concept of a Tiny Homes development in Berkeley; 2) to pass enabling legislation that will allow Tiny Homes and Tiny Home communities to be established in Berkeley for the purpose of housing persons who are homeless.  
**Financial Implications:** See report  
Contact: Andrew Wicker, Commission Secretary, 981-5400
- 38b. Tiny Homes and Tiny Home Communities as Homeless Housing Options**  
**From: City Manager**  
**Recommendation:** Review and consider information regarding Tiny Home Communities and either:  
1. Take no action on the Homeless Commission recommendation. Tiny Homes could be created now on private property as a temporary use through the Administrative Use Permit Process without passing additional enabling ordinances; or  
2. Refer the item to the City Manager for further research and analysis. The creation of Tiny Homes on public or private property for long-term use and/or as habitable dwellings with facilities intended as a homeless program would require modifications to the existing zoning and building codes and additional program requirements to ensure such developments are moving clients out of homelessness.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, Housing and Community Services, 981-5400
- Action:** Moved Item 38.b.2. to the Consent Calendar.



Office of the City Manager

ACTION CALENDAR  
OCTOBER 18, 2016

To: Honorable Mayor and Members of the City Council  
From: *DWR* Dee Williams-Ridley, City Manager  
Submitted by: Carol Johnson, Acting Director, Planning and Development Department  
Subject: Referral Response: Modify Numeric Limitations (“Quotas”) in the Elmwood (C-E) Commercial District; Amending BMC Chapters 23E.44 and 23F.04

RECOMMENDATION

Adopt first reading of an Ordinance amending Chapters 23E.44 and 23F.04 of the Berkeley Municipal Code to modify numeric limitations (“Quotas”) in the Elmwood (C-E) Commercial District.

SUMMARY

The Planning Commission considered a referral from the City Council to modify quotas in the Elmwood (C-E) Commercial District. The Commission recommends removing most of the quotas and modifying the quotas for restaurants in the Elmwood District, as well as modifying the definition of Food Product Store citywide. Quotas in the other three commercial districts (North Shattuck (C-NS), Telegraph Avenue (C-T) and Solano Avenue (C-SO)) were removed by Council in April 2016 (Ordinance 7,470-N.S.).

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The following sections summarize the Planning Commission recommendations and the recommendations for Council’s consideration and adoption.

A. Planning Commission Action

On June 15, 2016, the Planning Commission voted to make the following recommendations to the City Council:

- Modify numeric limitations in the Elmwood (C-E) Commercial District (BMC Chapter 23E.44); and modify the definition of Food Product Stores citywide (BMC Chapter 23F.04) (6-0-2-1; Ayes: Davis, Matthews, Murphy, Kapla, Poschman. Noes: None. Abstain: Bartlett, Lewis. Absent: Novosel).

Referral Response: Modify Numeric Limitations ("Quotas") in the Elmwood (C-E) Commercial District

ACTION CALENDAR  
October 18, 2016

**B. Zoning Amendment**

The Planning Commission recommended removing quotas from all uses in the C-E district except Food Service Establishments (restaurants). Food Service Establishments would be consolidated into one category, down from the current three. The maximum number of Food Service Establishments would be changed to 25 businesses, up from the current 23 restaurants in the District. Exceptions to the Food Service Establishment quota would be permitted with an Administrative Use Permit. To accomplish these changes, the section on Special Provisions – Numerical Limitations would be changed to remove references to all uses except Food Service Establishments. Other references to quotas in the Use Table and the Use Limitations sections of the chapter would be removed or modified as necessary.

The Commission also recommended modifying the definition of Food Product Stores citywide. This would clarify that incidental preparation of food for immediate consumption (sandwich preparation, for example) is a standard characteristic of these businesses and is permitted without any additional zoning approvals. This would allow Food Product Stores (grocery stores) to continue a long-standing practice in the Elmwood, as well as other commercial districts throughout the City.

A proposed Zoning Ordinance amendment addressing all of these changes is included as Attachment 1.

**BACKGROUND**

On January 17, 2012, the Council referred "Elmwood Commercial District Quota Revisions" to the Planning Commission for consideration (Attachment 2). The Commission met with Elmwood merchants and neighborhood groups in February 2013, and held two meetings (February 20, 2013 and July 10, 2013) to consider options to simplify quotas in the district. Work on the Elmwood quotas stopped after the July 2013 meeting when a discretionary review and resulting lawsuit related to a new restaurant at Wright's Garage dominated discussions related to quotas.

When the Planning Commission was ready to reconsider quotas in 2015, two more quota referrals related to other districts had been forwarded by Council. The Commission considered changes in all four commercial districts that had quotas: Elmwood Commercial (C-E), Telegraph Avenue Commercial (C-T), Solano Avenue Commercial (C-SO) and North Shattuck Commercial (C-NS). Changes to the Elmwood quotas were separated from the other three districts in order to give more focused consideration. The Planning Commission recommended removal of quotas from the C-T, C-SO and C-NS districts and the Council voted to remove these quotas in April 2016.

The Planning Commission considered the Elmwood quotas at its meetings of September 16, 2015, March 16, 2016, April 20, 2016 and June 15, 2016. The primary points of discussion were the number of restaurants that should be permitted in a simplified restaurant quota, and whether Food Product Stores should be included in the restaurant quota category so that food service that can occur at those businesses. The Elmwood Business Association (EBA) submitted a letter regarding possible quota



Referral Response: Modify Numeric Limitations ("Quotas") in the Elmwood (C-E) Commercial District

ACTION CALENDAR  
October 18, 2016

changes (Attachment 3) and City staff met with the EBA on February 24, 2016 to review the proposed changes.

The staff reports and minutes from the September 16, March 16, April 20 and June 15 meetings are included as Attachments 4 and 5. Staff reports from the previous meetings are available via these links: [February 20, 2013](#)<sup>1</sup>; [July 10, 2013](#)<sup>2</sup>.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The adoption of these ordinance amendments will make the zoning ordinance requirements in the Elmwood Commercial District more consistent with the other commercial districts and more comprehensible to property owners and business owners. It will give more options to merchants for locating new businesses and modifying existing businesses. Property owners will have greater flexibility marketing their properties in order to fill vacancies. Maintaining a simplified quota for restaurants will allow greater flexibility for restaurant owners to modify their business to meet economic and cultural shifts, and also maintain a balance between retail and restaurant uses. Finally, clarifying the uses that are permitted with a Food Product Store will more accurately describe how markets conduct business and the activities that can be expected with this kind of use.

#### ALTERNATIVE ACTIONS CONSIDERED

The Planning Commission considered the following alternatives:

- Number of restaurant tenant spaces. The Commission considered maintaining the existing ratio of restaurants to other tenant spaces (25:75, or 23 restaurant spaces spaces) and increasing the ratio to 30:70 (27 tenant spaces). The Commission also considered describing the number of restaurant spaces only as a percentage of total tenant spaces rather than as a number.

The Council could adopt quota changes within these parameters, or could choose to take no action.

#### CONTACT PERSON

Elizabeth Greene, Senior Planner, (510) 981-7484

---

<sup>1</sup> [http://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2013-02-20\\_Item%2010\\_Elmwood%20Quotas-COMBINED.pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2013-02-20_Item%2010_Elmwood%20Quotas-COMBINED.pdf)

<sup>2</sup> [http://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2013-07-10\\_Item%2010\\_Elmwood%20Quotas-Combined.pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2013-07-10_Item%2010_Elmwood%20Quotas-Combined.pdf)

Referral Response: Modify Numeric Limitations (“Quotas”) in the Elmwood (C-E) Commercial District

ACTION CALENDAR  
October 18, 2016

Attachments:

- 1: Ordinance Amending the Zoning Ordinance Chapters 23E.44 (C-E) and Chapter 23F.04 (Definitions)
- 2: January 17, 2012 Council referral regarding Elmwood quotas
3. December 15, 2015 letter from the Elmwood Business Association
4. PC reports and attachments
5. PC minutes



2

Gordon Wozniak  
Councilmember District 8

CONSENT CALENDAR

January 17, 2012

To: Honorable Mayor and Members of the City Council  
From: Councilmember Gordon Wozniak  
Subject: Referral: Elmwood Commercial District Quota Revisions

RECOMMENDATION

Refer to the Planning Commission (PC) a request to review the Elmwood Commercial District quota system and make recommendations to simplify the quota system to facilitate the opening of new businesses. In particular, the PC should consider 1) eliminating all retail quota categories, 2) combining the three food service quotas (carry-out, quick service & full service) into a single food service quota and maintain the requirement of needing to receive a Use Permit in order to exceed the numerical limitation for a food service establishment, and 3) other solutions which would make it easier to fill vacant storefronts while maintaining a vibrant business district.

CURRENT SITUATION AND ITS EFFECTS

When the Elmwood quota system was set up in the 1970s, the number of quotas and the quota categories were based on the business mix at the time. In the intervening decades, competition from Big Box stores and the Internet have caused many of the original businesses to lose their viability. In response to this exterior competition, some businesses have changed their product or service mix to meet changing customer demand. Sometimes as a result of these changes, business owners have found themselves in a different quota category, which was full, and thus in violation of the zoning ordinance.

Since, almost all of the existing quota categories are full, property owners without an existing quota slot have had difficulty in renting vacant storefronts. A particular example is 2992 College Avenue; the location was vacant for three years before A'Cuppa Tea secured a new quota slot after paying five thousand dollars for a Use Permit and undergoing a Public Hearing, which was then followed by an appeal of the Use Permit. During the three years that the space was vacant, several individuals expressed interest in opening a retail business in this space. However, because appropriate quota categories were full and the request to exceed the numerical limitations on a quota cost substantial time and money with no guarantee of success, no potential retailer chose to pursue this option. Due to the lack of open retail quota slots the retail space was converted, via a Use Permit with a Public Hearing, into an additional food service establishment. The increase in the percentage of food service establishments and the

Referral: Elmwood Commercial District Quota Revisions

CONSENT CALENDAR  
January 17, 2012

corresponding decrease in the number of retail establishments is a matter of concern for some merchants and neighbors.

#### RATIONALE FOR RECOMMENDATION

The Elmwood Commercial District has many more quota categories and detailed descriptions of each category than any other Berkeley business district. The ten Elmwood quota categories are:

1. Arts/Craft Shops, Gift/Novelty Shops, Jewelery/Watch Shops
2. Barber/Beauty Shops
3. Bookstores, Periodical Stands
4. Clothing Stores, including Hats, Shoes and Accessories
5. Financial Service, Retail
6. Photocopy Stores, Printing, Fax
7. ATMs
- Food Service Establishments
8. Carry-Out Food Service (to-go only)
9. Quick Service Restaurants (tables, but self-service)
10. Full Service Restaurants (sit down, with table service)

The large number of quoted uses and their detailed description make zoning particularly complicated in the Elmwood commercial district. Sometimes a small change in the physical configuration of an establishment can result in a business being reclassified into a different quota category, which is already full, causing the business to be in violation of the quota system.

One way to improve the situation would be to simplify the system by collapsing all of the separate retail and food service categories into two broad categories: 1) Retail and 2) Food Service. By eliminating all numerical quotas in the Retail category, but retaining the current numerical limit for Food Service category, the new system should facilitate new business startups as well as simplify administration of the quotas. In addition, if there is a vacant storefront, without a quota slot, a new system should make it easier to fill this space with a retail business, by maintaining the requirement for a Use Permit to convert a retail space into a new food service establishment. In contrast, any new retail store would not require a quota slot.

#### CONTACT PERSON

Gordon Wozniak, District 8

981-7180

**From:** Burroughs, Timothy  
**Sent:** Monday, October 01, 2018 1:32 PM  
**To:** 'Eugene Turitz' <[eturitz@sbcglobal.net](mailto:eturitz@sbcglobal.net)>  
**Subject:** RE: Letter to Planning Commission

Dear Eugene and members of Friends of Adeline,

I reviewed the letter to the Planning Commission from FOA. I am continually impressed by and appreciative of the dedication and level of engagement of the community members that represent FOA. Your input has and will continue to improve the Adeline planning process. Thank you.

That said, I have to admit that I'm a bit surprised by several of the statements in the communication to the Planning Commission.

The FOA communication states that staff has essentially disregarded community input to date about the importance of making affordable housing and measures to end displacement a primary focus of the Adeline planning process.

In fact, City staff repeatedly and explicitly communicate the central importance of affordable housing in the Adeline planning process. Advancing affordable housing, addressing displacement, and protecting and celebrating South Berkeley's unique cultural heritage are not only important priorities that we have heard from the community, they are also values that we share, as members of this community.

Indeed, City staff held an open house and series of workshops earlier in the spring that focused explicitly on the role of the plan in advancing affordable housing and addressing displacement. We also participated in the town hall organized by the Mayor and Council Member Bartlett, at which I and others spoke specifically to the importance of affordable housing and anti-displacement measures as pillars of the Adeline Plan. And there have been several smaller meetings in between, such as with the NAACP and another meeting hosted by FOA (attended by the City's consultant - Rick Jacobus), at which affordable housing was the main focus of the staff/consultant presentation and the discussion. Representatives from FOA have attended and participated in all of these events.

Further, the assertion in the FOA communication that "staff seems to be aiding [developers] as they try to develop whatever is now available" is a serious misconception about the role City staff play and the authority that we have.

All that said, the FOA communication to the Planning Commission is a good reminder that the City needs to be consistent in its communication about the status of the planning process and what we have heard to date, and that we need to continue to move forward with urgency. As staff works in the coming weeks to advance draft chapters of the plan and the draft EIR for public review, we will also send out additional communications about plan direction, based on what we have heard from the community.

Thank you for sharing this communication with me. And thank you for the many hours of time spent by FOA to inform the Adeline planning process. My staff and I look forward to continuing to work with FOA and many other community members and groups to guide development of a plan that is aligned with our shared values: advancing housing affordability and preventing displacement; creating more economic opportunity, especially for local community members and small businesses; honoring and celebrating the rich history of South Berkeley as a cultural center for African Americans; creating beautiful public spaces,

designed not only for cars, but also for people; and developing safe and sustainable transportation infrastructure. These are values that we have heard many community members express and that must be reflected in the Adeline plan.

Warm regards,

Timothy Burroughs  
Director, Planning Department  
City of Berkeley  
P 510.981.7437  
[www.CityofBerkeley.info](http://www.CityofBerkeley.info)