



Planning Commission

# AGENDA

## SPECIAL MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

[Click here to view the entire Agenda Packet](#)

***This Special Meeting will be held at the:***

**South Berkeley Senior Center  
2939 Ellis St., Berkeley, CA**

**Wednesday, July 18, 2018  
7:00 PM**

See **“MEETING PROCEDURES”** below.

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

### **PRELIMINARY MATTERS**

- 1. Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1  
Martinot, Steve, appointed by Councilmember Davila, District 2  
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3  
Mary Kay Lacey, appointed by Councilmember Harrison, District 4  
Beach, Benjamin, appointed by, Councilmember Hahn, District 5  
Kapla, Robb William, for Councilmember Wengraf, District 6  
Fong, Benjamin, appointed by Councilmember Worthington, District 7  
Vincent, Jeff, appointed by Councilmember Droste, District 8  
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
- 2. Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 3. Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See *“Public Testimony Guidelines”* below):
- 4. Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: September 5, 2018.**
- 5. Chairperson’s Report:** Report by Planning Commission Chair.
- 6. Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 7. Approval of Minutes:** Approval of Draft Minutes from the meeting on June 20, 2018.
- 8. Future Agenda Items and Other Planning-Related Events:** None.

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

- 9. Discussion:** **Adeline Corridor Specific Plan Update and Draft Environmental Impact Report (EIR) and EIR Scoping Session**
- Recommendation:** Receive project update and comments from members of the public, organizations and interested agencies on issues the EIR should address.
- Written Materials:** N/A.
- Web Information:** [Adeline Corridor Specific Plan Notice of Preparation \(NOP\)](#)
- Continued From:** N/A.
- 10. Discussion:** **Analysis and Options Related to Small Business Support Recommendations**
- Recommendation:** Discuss the options for Zoning Ordinance amendments related to the Small Business support recommendations.
- Written Materials:** Attached.
- Web Information:** N/A.
- Continued From:** 6/20/2018.

**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:** None.

**Late Communications:** (Received after the packet deadline): None.

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

## **ADJOURNMENT**

### **Meeting Procedures**

#### **Public Testimony Guidelines:**

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

#### **Consent Calendar Guidelines:**

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

**Procedures for Correspondence to the Commissioners:**

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

**Communications are Public Records:** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

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

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

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

***Please refrain from wearing scented products to public meetings.***



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2   **June 20, 2018**

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

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

5   **Commissioners Present:** Steve Martinot, Benjamin Beach (arrived at 7:05), Robb William  
6   Kapla, Christine Schildt, Jeff Vincent, Rob Wrenn, Amanda Ramadhani (substitute for Benjamin  
7   Fong), Mary Kay Lacey.

8   **Commissioners Absent:** Prakash Pinto (excused).

9   **Staff Present:** Alene Pearson, Sydney Stephenson, Jordan Klein (OED Staff), Eleanor  
10   Hollander (OED Staff).

11   **ORDER OF AGENDA:** No changes.

12   **CONSENT CALENDAR:** None.

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

14   **PLANNING STAFF REPORT:** Alene is the new Planning Commission Secretary. On June 26,  
15   the Council will hold the first reading of the Density Bonus Phase 1. On June 29, the new ADU  
16   Chapter and regulations becomes effective. On July 10, Urban Agriculture and Cannabis issues  
17   will have their first readings at Council.

18   **COMMUNICATIONS IN PACKET:**

- 19       • 2018-06-20 Shira Ilana Leed, Chairperson of Commission on Disability, Letter Regarding  
20       ADU amendments

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

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

- 24       • 2018-06-20 Staff, Small Business Package Presentation, Item 9
- 25       • 2018-06-20 Staff, Planning Commission Workplan Timeline, Item 10
- 26       • 2018-06-20 Staff, Workplan Progress Presentation, Item 10

27   **CHAIR REPORT:** None.

28   **COMMITTEE REPORT:** None.

29 **7. APPROVAL OF MINUTES:**

30 Motion/Second/Carried (Vincent/Lacey) to approve the Planning Commission Meeting  
31 Minutes from May 16, 2018. Ayes: Lacey, Beach, Martinot, Schildt, Kapla, Vincent,  
32 Ramadhani, Wrenn. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

33

34 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** Staff is still  
35 figuring out what items will be brought to the July 18 meeting.

36 **AGENDA ITEMS**

37 **9. Discussion: Small Business Package Referral**

38 Staff from the Office of Economic Development presented the Small Business Package  
39 Referral and the following six proposed modifications to the Zoning Ordinance to support  
40 small businesses:

- 41 1. Remove parking requirement for a change of use for qualifying projects in C-prefixed  
42 districts;
- 43 2. Condense food services categories to a single category;
- 44 3. Standardize square footage thresholds that trigger various permits for “changes of use”  
45 across all C-prefixed districts;
- 46 4. Standardize “uses deemed compatible” across C-prefixed districts to the same level of  
47 discretionary review;
- 48 5. Expand the “commercial recreation” thresholds adopted for the Downtown across other  
49 C-prefixed districts; and
- 50 6. Allow the incidental service of beer and wine at a food service establishment via a Zoning  
51 Certificate (ZC) in C-prefixed districts, and impose performance standards where there  
52 would not otherwise be conditions of approval.

53 The Commission discussed the proposed Zoning Ordinance amendments. The Commission  
54 appreciated the outreach OED did to small businesses and commercial commissions. The  
55 Commission expressed concern of commercial displacement by adding value to commercial  
56 spaces. The Commission requested more research and information regarding  
57 recommendations 1, 3, and 6. The Commission made the following motion to set a public  
58 hearing for recommendations 2, 4, and 5 on July 18, 2018.

59 Motion/Second/Carried (Schildt/Vincent) to request from staff to prepare a Public Hearing for  
60 July 18<sup>th</sup> with the recommendations #2, #4, and #5. Ayes: Lacey, Beach, Martinot, Schildt,  
61 Kapla, Vincent, Ramadhani, Wrenn. Noes: None. Abstain: None. Absent: Pinto. (8-0-0-1)

62

63 Another Public Hearing will be held at a future date with the recommendations 1, 3, and 6. At  
64 the next meeting, Staff will bring back more information including a proposed square footage  
65 threshold for change of use to trigger an AUP for parking, and research on eliminating levels  
66 of discretion for square footage for change of use.

67

68 Public Comments: 3 speakers.

69 **10. Discussion: Planning Commission Workplan Progress Presentation**

70 Staff presented the Planning Commission Workplan progress and accomplishments from  
71 January 2017 to June 2018 (in the past 18 months), including number of PC meetings,  
72 agenda items, topics discussed, and public hearings held. Staff will provide the working  
73 referral document quarterly to the Planning Commission. The Commission asked clarifying  
74 questions and appreciated the information presented on the tables and matrix.

75 Public Comments: None.

76 **11. Discussion: Final Report from Subcommittee on Affordable Housing and**  
77 **Community Benefits**

78 Chair Schildt presented report regarding the Subcommittee on Affordable Housing and  
79 Community Benefits. There are issues that are moving to other subcommittees and other  
80 work that are moving forward to Council. This report addressed the conclusion of the  
81 subcommittee's work. The Commission asked about the next steps for the Student Housing  
82 referrals. Staff will be creating a report for the September PC meeting to address Student  
83 Housing with analysis of referrals, CEQA issues, and legal questions.

84 Public Comment: None.

85 **The meeting was adjourned at 9:22 pm**

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

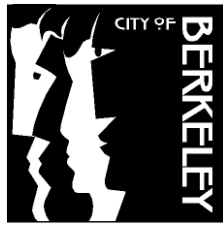
87 **Members in the public in attendance: 5**

88 **Public Speakers: 5 speakers**

89 **Length of the meeting: 2 hour and 19 minutes**







Planning and Development Department  
Land Use Planning Division

## NOTICE OF PREPARATION (NOP) OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND SCOPING SESSION FOR THE PROPOSED ADELINE CORRIDOR SPECIFIC PLAN

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The City of Berkeley is preparing a Draft Environmental Impact Report (EIR) for the Adeline Corridor Specific Plan (“Specific Plan”), as identified below, and is requesting comments on the scope and content of the Draft EIR. The Draft EIR will address the potential physical and environmental effects of the Specific Plan for each of the environmental topics outlined in the California Environmental Quality Act (CEQA). The City has not prepared an Initial Study. Under CEQA, a Lead Agency may proceed directly with EIR preparation without an Initial Study if it is clear that an EIR will be required. The City has made such a determination for this project.

The City of Berkeley is the Lead Agency for the Specific Plan. This notice is being sent to the California State Clearinghouse, Alameda County Clerk, adjacent cities, potential responsible agencies, and other interested parties. Responsible agencies are those public agencies, besides the City of Berkeley, that also have a role in approving or carrying out the project. When the Draft EIR is published, a Notice of Availability of a Draft EIR will be sent to Responsible Agencies, other public agencies, and interested parties and individuals who have indicated that they would like to review the Draft EIR.

Responses to this NOP and any questions or comments should be directed in writing to: *Alisa Shen, Principal Planner, Planning and Development Department, 1947 Center Street, 2nd Floor, Berkeley, CA 94704; or [ashen@cityofberkeley.info](mailto:ashen@cityofberkeley.info)*. Comments on the NOP must be received **on or before August 6, 2018**. In addition, comments may be provided at the EIR Scoping Meeting (see below). Comments should focus on possible impacts on the physical environment, ways in which potential adverse effects might be minimized, and alternatives to the proposed Specific Plan.

**EIR PUBLIC SCOPING MEETING:** The City of Berkeley Planning Commission will conduct a public scoping session at a Special Meeting/Location on **July 18, 2018**, starting at **7:00 PM** at the **South Berkeley Senior Center, 2939 Ellis Street, Berkeley, California.**<sup>1</sup>

**PROJECT TITLE: Adeline Corridor Specific Plan**

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<sup>1</sup> Visit: [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx) for agendas and other meeting information.

**PROJECT LOCATION:** The Plan Area is located in the southern portion of the City of Berkeley and extends approximately 1.3 miles north from the Berkeley/Oakland border along Adeline Street and Shattuck Avenue to the intersection of Shattuck Avenue and Dwight Way. The Plan Area abuts Downtown Berkeley to the north and extends to the City of Oakland border to the south. Figure 1 shows the Plan Area boundary.

**PROJECT SPONSOR:** City of Berkeley

**EXISTING CONDITIONS:** The Plan Area encompasses approximately 86 acres of land. The Plan Area contains a wide range of commercial, civic, cultural and residential land uses as well as the Ashby BART Station, a regional transit facility, located in the central/southern portion of the Plan Area. The Plan Area is characterized by a varied street environment and approximately 38 acres (44 percent) of right-of-way (e.g. streets and sidewalks) used for multiple modes of transportation. Of the remaining area, approximately 19 acres are developed with commercial uses, 11 acres are developed with public, civic, or institutional uses, 9 acres are developed with residential uses, and the remaining area is developed with parking, warehouse or mixed uses, or is vacant. The majority of land surrounding the Plan Area is dedicated to residential uses and is characterized by well-established neighborhoods with a mix of single-family and small multi-family developments.

The Plan Area slopes in a southwesterly direction from an elevation of approximately 167 feet above sea level at the intersection of Shattuck Avenue and Dwight Way to approximately 85 feet above sea level near the Berkeley/Oakland City Limit. With an average slope of approximately 1.2 percent, the Plan Area is conducive to walking and bicycling. Approximately 11 properties in the Plan Area are present on one of the lists of hazardous waste sites enumerated under Section 95962.5 of the Government Code.

**PROJECT DESCRIPTION and BACKGROUND:** In 2015, the City of Berkeley began a community planning process to develop a long-range plan for the Adeline corridor. A long-range plan provides a blueprint for the future, an opportunity for the community to express its priorities, and serves as a guide for public and private investment in the area. The planning effort is funded in part by a grant from the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) to promote opportunities to plan for transit-oriented development around BART stations and other high-frequency transit and safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities.

Building on the feedback from series of community events, stakeholder meetings, and working sessions, the vision of the Specific Plan is to:

- Make the Adeline Corridor a “connector” that weaves together healthy, diverse, and vibrant neighborhoods;
- Champion equitable, transit-oriented development, including high-quality affordable housing for a range of income levels, and that supports a thriving business community populated by independent locally-owned business, non-profits and arts organizations;

- Provide safe, “complete streets” and other public spaces that are walkable, bikeable, green, and accessible for persons of all ages and abilities;
- Create a place where history--the experiences and contributions of people, places and institutions that have made South Berkeley what it is today—is recognized and reflected in its future; and,
- Create a place where people have equitable access and opportunity to shared prosperity and quality of life.

The Adeline Corridor Specific Plan will have a horizon year of 2040. The plan will direct changes in land uses and development and right-of-way improvements. The plan's policies and standards will only apply within the Plan Area boundary which includes the street itself, as well as parcels on either side of the street. Although the plan's geographical scope is limited, it will also consider the relationship to the larger South Berkeley neighborhood.

The components of the Specific Plan will include:

- Text and diagrams showing the distribution, location, and extent of all land uses;
- Standards and guidelines for development, including adjustments to allowable building height, density, and use; and
- Program of implementation measures including regulations, programs, public works projects and potential financing recommendations.

For more information about the Specific Plan, please visit the Plan website at:  
<https://www.cityofberkeley.info/AdelineCorridor/>

**POTENTIAL ENVIRONMENTAL EFFECTS:** It is anticipated that the proposed Specific Plan may result in potentially significant environmental effects to the following:

- Air Quality;
- Biological Resources;
- Cultural and Historic Resources;
- Geology and Soils;
- Greenhouse Gas Emissions;
- Hazards and Hazardous Materials;
- Hydrology and Water Quality;
- Land Use and Planning;
- Noise;
- Population and Housing;
- Public Services and Recreation
- Transportation;
- Tribal Cultural Resources; and
- Utilities and Service Systems.

All of the noted environmental issues will be analyzed in the Draft EIR.

The Specific Plan has no potential for impacts on the following environmental factors and as a result, these environmental factors will not be the subject of the Draft EIR: Aesthetics (per Public Resources Code section 21099(d)(1) regarding infill sites within a transit priority area), Agriculture and Forestry Resources (there are no agricultural and forest land resources in the Plan Area) and Mineral Resources (there are no mineral resources in the Plan Area).

The Draft EIR will also examine a reasonable range of alternatives to the Specific Plan, including the CEQA-mandated No Project Alternative and other potential alternatives that may be capable of reducing or avoiding potential environmental effects while generally meeting the Plan objectives. The Draft EIR will also analyze the cumulative impacts that could result with adoption and development under the Specific Plan.



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Alisa Shen, Principal Planner

Date of Distribution: July 6, 2018

Attachment: Figure 1: Project Area Map (Plan Area Boundary)

Figure 1







Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: July 18, 2018  
TO: Members of the Planning Commission  
FROM: Alene Pearson, Principal Planner  
SUBJECT: Analysis and Options Related to Small Business Support Recommendations

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### SUMMARY

On June 20, 2018, the Planning Commission considered a set of six recommendations for Zoning Ordinance modifications that support Berkeley's small businesses (*see Attachment 1: Planning Commission Staff Report*). Recommendations simplify and shorten the permitting process for new and existing small businesses. The Planning Commission considered all recommendations and requested that a Public Hearing be set on July 18, 2018 to review Zoning Ordinance amendments -- to be drafted by staff -- on three of the six recommendations.

While drafting Zoning Ordinance amendments, staff recognized that proposed modifications required further analysis and discussion by the Planning Commission. This report provides analysis of all six recommendations and includes the following information to help inform the Commission's discussion:

- Zoning Ordinance language and tables summarizing zoning regulations;
- Background and analysis of existing zoning regulations; and
- Options for translating recommendations into Zoning Ordinance amendments.

Direction given by the Planning Commission will provide information needed to draft Zoning Ordinance amendments to be considered at a Public Hearing on October 3, 2018.

### BACKGROUND

The six recommendations in this report focus on permitted uses, levels of discretion, parking requirements, and size thresholds for businesses in the commercial districts. Recommendations have been shared with the community as described below.

#### Outreach:

The six recommendations discussed in this report were presented to the Planning Commission on June 20, 2018. Prior to that meeting, these ideas were presented by the Planning Department Director and the Economic Development Manager at the Downtown Berkeley Association board meeting on May 24, 2018 and the Telegraph Business District (TBID) board meeting on June 12, 2018. Recommendations were also shared with Berkeley Business District

Network (which includes representatives from all of the individual business improvement districts and business associations in Berkeley) on May 24, 2018. Other members of the Economic Development Business Services staff shared and discussed the recommendations in detail with the Solano Business Improvement District (BID) Advisory Board on May 8th 2018, the North Shattuck BID Board on April 19, 2018, with the Gilman Merchants group on June 13, 2018, the Elmwood Merchants Association Meeting (BID Board) at an evening business roundtable on May 17, 2018 and on two occasions at the Lorin Business Association (LBA) first in April of 2018, and again at the group’s most recent meeting on June 14, 2018. At the Planning Commission meeting on June 20th, representatives from the TBID, LBA and Bay Area Organization of Black Owned Businesses (BAOBOB) spoke in support of the six recommendations.

**Commercial Districts:**

Berkeley’s General Plan provides three land use designations that support commercial activities. Within these three designations, there are nine commercial zoning districts as shown in Table 1:

**Table 1: General Plan Designations and Zoning Ordinance Land Use Districts**

| Land Use Designation    | Zoning District | District Title              |
|-------------------------|-----------------|-----------------------------|
| Neighborhood Commercial | C-E             | Elmwood Commercial          |
|                         | C-N             | Neighborhood Commercial     |
|                         | C-NS            | North Shattuck Commercial   |
|                         | C-SA*           | South Area Commercial       |
|                         | C-SO            | Solano Avenue Commercial    |
| Avenue Commercial       | C-1             | General Commercial          |
|                         | C-SA*           | South Area Commercial       |
|                         | C-T             | Telegraph Avenue Commercial |
|                         | C-W             | West Berkeley Commercial    |
| Downtown                | C-DMU           | Downtown Mixed Use          |

\* Portions of the C-SA are included in both the Neighborhood Commercial and Avenue Commercial General Plan designations.

**Permitted Uses:**

Each zoning district has a unique set of regulations that pertain to allowable development standards and permitted uses. The Zoning Ordinance Revision Project (ZORP) will develop master use tables and development standard tables across all districts by early 2019 – an effort that could lead to new, uniform standards. In advance of that effort, the recommendations in this report aim to modify certain regulations and simplify definitions in the commercial districts that will provide immediate benefits to Berkeley’s small business community.

**Levels of Discretion:**

All businesses in the City of Berkeley are required to be in conformance with the uses permitted in the Zoning Ordinance. Some uses are allowed by-right and are issued a Zoning Certificate (ZC) without public review or noticing. Other uses require discretionary review and are required to proceed through staff review and/or public review prior to receiving an Administrative Use Permit (AUP) or Use Permit with Public Hearing (UPPH)<sup>1</sup>.

<sup>1</sup> Timelines and cost for these different types of land use permits can be found via this link: [https://www.cityofberkeley.info/Planning\\_and\\_Development/Home/Types\\_of\\_Land\\_Use\\_Permits.aspx](https://www.cityofberkeley.info/Planning_and_Development/Home/Types_of_Land_Use_Permits.aspx):



Size Thresholds and Average Commercial Space Sizes:

Table 2 provides average size (in square feet) of commercial spaces in most of the City's commercial zoning districts<sup>2</sup>.

**Table 2: Average Size of Commercial Spaces by District**

| Land Use Designation    | Zoning District | Area Covered          | Average Size of Commercial Space (square feet) |
|-------------------------|-----------------|-----------------------|--|
| Neighborhood Commercial | C-E             | Elmwood District      | 1,426  |
|                         | C-NS            | North Shattuck Avenue | 1,520  |
|                         | C-SA            | Sacramento Street     | 1,274  |
|                         | C-SO            | Solano Avenue         | 1,237*   |
| Avenue Commercial       | C-1             | University Avenue     | 2,252  |
|                         | C-SA            | Lorin District        | 2,118  |
|                         | C-SA            | South Shattuck Avenue | 3,577**  |
|                         | C-T             | Telegraph Avenue      | 1,742  |
|                         | C-W             | San Pablo Avenue      | 2,879  |
| Downtown                | C-DMU           | Downtown              | 2,314  |

\* Average square footage does not include the former Oaks Theater (~10,447 sq. ft.).

\*\* Value not statistically significant: square footage only provided for 33 of 81 businesses.

Note that Commercial Neighborhood zoning districts generally have an average size of less than 2,000 square feet and Avenue Commercial zoning districts generally have an average size of less than 3,000 square feet. This information can be referred to when considering size thresholds and commercial space sizes discussed in this report.

**DISCUSSION**

The Planning Commission considered six recommendations related to permitting processes for small businesses. In this section, each recommendation is presented for discussion with background information that provides context, options to consider, staff's reasoning for option(s), and questions for the Planning Commission to discuss.

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

Background: Different commercial uses generate different levels of customer activity. Existing parking requirements were developed to reflect parking needs associated with activity level. The Zoning Ordinance requires new businesses to provide additional parking (“the incremental change in parking”) if a proposed use has a higher parking requirement than the prior use. This change is triggered solely by use and does not involve an increase in size of commercial space. If the applicant can't provide additional parking, they can apply for a parking waiver via the AUP process. See Table 3 for details.

<sup>2</sup> The City maintains a database of commercial businesses. This database is updated twice annually and is accurate to the extent that field observations, permit records, and information provided to the City by commercial listing services are correct.

**Table 3: Parking Required with Change of Use in Existing Commercial Spaces**

| Land Use Designation    | Zoning District | Parking Required for Medical Practitioners and Medical Offices | Parking Required for Quick or Full Service Restaurants | Parking Required for All Other Uses       |
|-------------------------|-----------------|--|--|---|
| Neighborhood Commercial | C-E             | 1 per 500 sq. ft. (if over 6,000 sq. ft.)                      | 1 per 500 sq. ft. (if over 6,000 sq. ft.)              | 1 per 500 sq. ft. (if over 6,000 sq. ft.) |
|                         | C-N             | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
|                         | C-NS            | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
|                         | C-SA            | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
|                         | C-SO            | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
| Avenue Commercial       | C-1             | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
|                         | C-T             | NA   | NA   | NA  |
|                         | C-W             | 1 per 300 sq. ft.  | 1 per 300 sq. ft.                                      | 1 per 500 sq. ft.                         |
| Downtown                | C-DMU           | 1 per 667 sq. ft.  | 1 per 667 sq. ft.                                      | 1 per 667 sq. ft.                         |

*HYPOTHETICAL EXAMPLE: An existing retail clothing store in a 1,500 square foot commercial space closes. A food service establishment wants to open at this same location with no changes to store area. Per the current code requirements, two additional parking spaces would be required to support the new use. If off-street parking can't be provided, the new business must apply for a "parking waiver" through the AUP process*

**Recommended Option 1:**

**Remove requirement for incremental change in parking associated with change of use in all commercial districts, but leave parking requirements for new floor area unchanged.** Reasoning: Most commercial buildings were created without providing off street parking, and the sites typically do not have room to provide parking onsite. Also, it is difficult for businesses to locate additional parking off-site that is not already needed for other uses as required parking. For a new business to open, these conditions leave a parking waiver as the only option to allow a business to open and to comply with the Zoning Ordinance.

***QUESTION FOR PLANNING COMMISSION:*** Does this option reflect the desired direction of the Planning Commission? If no, provide alternate option.

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

**Background:** Currently, food service establishments are categorized as carry out, quick service or full service. These categories were established when the Zoning Ordinance had quotas for types of food service establishments. Quotas are no longer in effect; however, these categories currently have different regulations for parking and for permits. See Attachment 2 (*Food Service Establishment Regulations*) for details.

**Recommended Option 1:**

**Collapse three food service categories into one category.** Food service categories were used to maintain quotas, which are no longer tracked. This option will simplify the Zoning Ordinance, but requires consideration of two additional modifications and may require additional outreach:

Parking Requirements: Quick service and full-service restaurants require 1 parking space per 300 square feet. Carry out food service is subject to the district minimum, which is 1 parking space per 500 square feet. **Creating one food service category requires a decision about which parking requirement to carry forward: 1 space per 300 square feet or 1 space per 500 square feet.**

Level of Discretion/Size Thresholds: Permits required for food establishments vary by size in C-1, C-DMU, C-T and C-W. For example:

- Quick service restaurants that are greater than 1,500 square feet require a UPPH in the C-T and an AUP in the C-1.
- Full service restaurants require an AUP in the C-1 and C-T if they are greater than 1,500 square feet, an AUP in the C-W if they are between 1,500 and 2,500 square feet, and an AUP in the C-DMU if they are greater than 4,000 square feet.

**Creating one food service category requires a decision about appropriate level of discretion and/or size threshold to carry forward.**

Alternate Option 2:

Collapse restaurant types in C-1, C-N, C-NS, C-SA, C-T and C-SO, maintaining level of discretion associated with commercial space size. Reasoning: Collapsing the restaurant classification in these six districts is straightforward: the level of discretion associated with the size of the commercial space is consistent across all three classifications (ZC if less than 1,000 square feet and AUP if greater than 1,000 square feet). This option begins to simplify the code and does not change levels of discretion. The parking requirement question in Recommended Option 1 would still need to be considered.

**QUESTION FOR PLANNING COMMISSION:** *Do either of these options – with modifications – reflect the desired direction of the Planning Commission? If no, what other options should be pursued?*

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

Background: Change of use in a commercial district can require an increased level of discretion. Level of discretion is based on the existing size of the commercial space. See Table 4 for details.

**Table 4: Permits Required with Change of Use in Existing Commercial Spaces**

| Land Use Designation    | Zoning District              | Commercial Space (square feet) | Permit Currently Required | Option 1   | Option 2   |
|-------------------------|------------------------------|--------------------------------|---------------------------|------------|------------|
| Neighborhood Commercial | C-E                          | under 2,000                    | ZC                        | ZC         | ZC         |
|                         | C-N                          | 2,000 - 3,000                  | AUP                       | AUP        | <b>ZC</b>  |
|                         | C-NS                         | over 3,000                     | <b>UPPH</b>               | <b>AUP</b> | <b>AUP</b> |
|                         | C-SO                         |                                |                           |            |            |
| Avenue Commercial       | C-1<br>C-SA                  | under 3,000                    | ZC                        | ZC         | ZC         |
|                         |                              | 3,000 - 5,000                  | AUP                       | AUP        | <b>ZC</b>  |
|                         |                              | over 5,000                     | <b>UPPH</b>               | <b>AUP</b> | <b>AUP</b> |
|                         | C-W (uses other than retail) | under 3,000                    | ZC                        | ZC         | ZC         |
|                         |                              | 3,000 - 5,000                  | AUP                       | AUP        | <b>ZC</b>  |
|                         |                              | over 5,000                     | <b>UPPH</b>               | <b>AUP</b> | <b>AUP</b> |
|                         | C-W (retail)                 | under 3,500                    | ZC                        | ZC         | ZC         |
|                         |                              | 3,500 - 7,500                  | AUP                       | AUP        | <b>ZC</b>  |
|                         |                              | over 7,500                     | <b>UPPH</b>               | <b>AUP</b> | <b>AUP</b> |
|                         | Downtown                     | C-T                            | NA                        | NA         | NA         |
| C-DMU                   |                              | NA                             | NA                        | NA         | NA         |

Note that Neighborhood Commercial zoning districts have lower thresholds than Avenue Commercial zoning districts. Thresholds reflect the average commercial space size per district, as presented in the Background section of this report. Levels of discretion increase as commercial spaces get larger.

*HYPOTHETICAL EXAMPLE: A real estate office in the C-N wants to locate in a commercial space previously occupied by a pet store. Per current regulations, the change of use would require a(n):*

- ZC if the commercial space is less than 2,000 square feet;
- AUP if the commercial space is 2,500 square feet; or
- UPPH if the commercial space is over 3,000 square feet.

**Recommended Option 1:**

Lower the level of discretion associated with a change of use from a UPPH to an AUP in all relevant districts (see bold text in Table 4). Reasoning: This option maintains consistency with the types of projects currently subject to discretionary review, but lowers the level of review to support small businesses. An AUP retains the ability for interested parties to comment on the application and submit an appeal. Add standard conditions of approval as performance standards to the Zoning Ordinance for any use that would be allowed with a ZC.

**Alternate Option 2:**

In addition to Recommended Option 1, lower the level of discretion associated with a change of use from an AUP to a ZC in all relevant districts (see bold text in Table 4). Reasoning: This option maintains discretionary review for projects in large<sup>3</sup> commercial spaces and lowers the level of review to support small businesses. An AUP retains the ability for interested parties to

<sup>3</sup> The term “large” refers to the third size-tier in the Use and Required Permit tables of the Zoning Ordinance.

comment on the application and submit an appeal. Add standard conditions of approval as performance standards to the Zoning Ordinance for any use that would be allowed with a ZC.

**QUESTION FOR PLANNING COMMISSION:** *Do either of these options reflect the desired direction of the Planning Commission? If yes, which one? If not, provide alternate option.*

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

Background: The Zoning Officer can approve an unlisted use for a commercial business if that use is deemed compatible with the purposes of the district. The C-N, C-E, C-NS, C-SA and C-SO (all Neighborhood Commercial zoning districts) require a UPPH to initiate this process. See Table 5 for details.

**Table 5: Permits Required when Establishing a “Use Deemed Compatible”**

| Land Use Designation    | Zoning District | Permit Currently Required | Option 1   |
|-------------------------|-----------------|---------------------------|------------|
| Neighborhood Commercial | C-E             | <b>UPPH</b>               | <b>AUP</b> |
|                         | C-N             | <b>UPPH</b>               | <b>AUP</b> |
|                         | C-NS            | <b>UPPH</b>               | <b>AUP</b> |
|                         | C-SA            | <b>UPPH</b>               | <b>AUP</b> |
|                         | C-SO            | <b>UPPH</b>               | <b>AUP</b> |
| Avenue Commercial       | C-1             | AUP                       | AUP        |
|                         | C-T             | AUP                       | AUP        |
|                         | C-W             | AUP                       | AUP        |
| Downtown                | C-DMU           | AUP                       | AUP        |

Recommended Option 1:

Lower the level of discretion for approval of a “use deemed compatible” from UPPH to AUP (see bold text in Table 5). Reasoning: This option will create consistency across all zoning districts. All new uses will be subject to review and public noticing and uses must be determined to be compatible with the unique purposes of the district. Note that with an AUP, the Zoning Officer’s decision would still be subject to appeal.

**QUESTION FOR PLANNING COMMISSION:** *Does this option reflect the desired direction of the Planning Commission? If no, provide alternate guidance.*

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

Background: Commercial Recreation Centers are defined in the Zoning Ordinance as follows:

**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.*

Commercial Recreation Centers (CRC) currently require a Use Permit in all commercial zoning districts, regardless of commercial space size, except in the C-T and the C-DMU. CRCs are allowed in the C-T (all sizes) with an AUP and 300 foot noticing to neighbors. In the C-DMU, the following regulations apply, as shown in Table 6:

**Table 6: Permits Required for CRCs in the C-DMU**

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

An example of a recently approved CRC is *Draw* -- a bar and pool hall at 64 Shattuck Square. At the June 20<sup>th</sup> Planning Commission Meeting, “escape rooms” were mentioned as a new business type that falls under this classification. In staff’s opinion, CRCs offer unique recreational experiences and serve as regional attractions.

Recommended Option 1:

Apply C-DMU’s regulations to CRCs in the Avenue Commercial districts (C-1, C-T, C-W).

Reasoning: Option 1 allows CRCs with a lower level of discretion in commercial zoning districts that support regionally-serving businesses.

Recommended Option 2a:

Allow CRCs in the Neighborhood Commercial zoning districts with a ZC if facility is under 1,500 square feet, and an AUP if facility is between 1,500 and 5,000 square feet. Add a reference to “neighborhood-serving commercial development” in the findings for CRCs in Neighborhood Commercial districts. Reasoning: Allows CRCs to locate in all Commercial districts with lower levels of discretion. Proposed clarification of findings will ensure that CRCs meet the purposes of the districts where they locate.

Alternate Option 2b:

Allow CRCs in the Neighborhood Commercial zoning districts with a ZC if facility is under 1,500 square feet, and an AUP if facility is between 1,500 and 3,000 square feet. Add a reference to “neighborhood-serving commercial development” in the findings for CRCs in Neighborhood Commercial districts. Reasoning: Same as Recommendation Option 2a, but lowers the threshold size that triggers a UPPH to align with the average size of commercial spaces in the Commercial Neighborhood districts. See the Background section for more information on average size of commercial spaces. Proposed clarification of findings will ensure that CRCs meet the purposes of the districts where they locate.

**QUESTION FOR PLANNING COMMISSION:** *Do any of these options reflect the desired direction of the Planning Commission? If yes, which one? If no, provide alternate option.*

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

Background: Beer and wine service incidental to seated food service at a quick or full service restaurant currently requires an AUP in all commercial districts. AUPs allow public notice, referral to the BPD for comment, and this activity is subject to conditions of approval to ensure the use does not create detriment.

Recommended Option 1:

Lower the level of discretion from an AUP to a ZC for beer and wine service for incidental seated food service. Add standard conditions of approval as performance standards to the Zoning Ordinance for beer and wine service incidental to seated food service. Create a new ZC form (ZC-REST) that lists performance standards. Reasoning: Applications for beer and wine are non-controversial and rarely denied. The conditions that are applied to this activity have become standardized, and have proven overtime to be effective to limit detriment. Option 1 creates a more expeditious, cost-effective and certain process for business owners.

***QUESTION FOR PLANNING COMMISSION:*** *Does this option reflect the desired direction of the Planning Commission? If no, provide guidance on alternate option.*

**NEXT STEPS**

Staff recommends that the Planning Commission discuss and provide feedback on the options presented in this staff report. Based on Planning Commission's feedback, staff will draft Zoning Ordinance amendments and set a public hearing on October 3, 2018.

**Attachments**

1. Planning Commission Staff Report
2. Table of Food Service Establishment Regulations







Planning and Development Department

## STAFF REPORT

DATE: June 20, 2018

TO: Members of the Planning Commission

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

SUBJECT: Modifications to the Zoning Ordinance to Support Small Businesses

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### INTRODUCTION

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

Staff from the Office of Economic Development (OED) and the Planning Department have worked together to identify six potential modifications to the Zoning Ordinance to make the zoning review process for small businesses less complex and more efficient. Council affirmed this policy direction with a unanimous vote at their meeting on May 15, 2018 to refer the following six recommendations to the Planning Commission for consideration<sup>2</sup>:

- 1) Remove the parking requirement for a change of use for qualifying projects in C-prefixed districts;
- 2) Condense food services categories (i.e., quick serve, carry out and full service) to a single category and impose performance standards in cases where there would not otherwise be conditions of approval;

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

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

- 3) Standardize square footage thresholds that trigger various permits for “changes of use” and food service across all C-prefixed districts;
- 4) Standardize “uses deemed compatible” across all C-prefixed districts to the same level of discretionary review;
- 5) Expand the “commercial recreation” thresholds adopted for the Downtown across other C-prefixed districts; and
- 6) Allow the incidental service of beer and wine at a food service establishment via a Zoning Certificate (ZC) in C- prefixed districts, and impose performance standards where there would not otherwise be conditions of approval.

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

## **BACKGROUND**

Since its last major overhaul in 1999, the Zoning Ordinance has been updated at least 14 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Independent of the ongoing targeted Zoning Ordinance Revision Project (ZORP), additional updates are needed today to reflect our continually changing city and to streamline the zoning permit review process for our business community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense.<sup>3</sup> When asked how the City can improve its services for small businesses, in interviews, surveys, and at the December 2017 small business forum hosted by OED, respondents consistently cited “streamline permitting and zoning” as their top choice.

Proposed modifications are designed with consideration of the unique needs and challenges of small businesses. Over the first quarter of 2018, OED and Planning Department staff collaborated to identify potential modifications to the Zoning Ordinance that will streamline the review process for small businesses, while maintaining sufficient guidelines and discretion over impacts to neighboring businesses and residents. Staff consulted with business district network leaders, and numerous individual owners and operators of Berkeley’s small businesses and also considered recent experiences of business owners that decided *not* to locate or expand in Berkeley.

Consequently, the six proposed modifications to the Zoning Ordinance are an important component of a broader effort to improve customer service and achieve Berkeley’s strategic plan goals of fostering a sustainable, locally-based economy<sup>4</sup> while honoring

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

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

the City's commitment to public participation. The goal of these zoning changes is to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with the stated purpose of each of the commercial districts.<sup>5</sup>

## PROPOSED AMENDMENTS

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

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

**Background:** Currently, when a change of use occurs in a commercial district (e.g., from retail to food service or medical office) without any increase in square footage or change to the building exterior, the new use is required to provide the incremental difference between the two numerical parking standards. If an applicant does not (or cannot) provide additional parking, they can apply for a parking waiver via an Administrative Use Permit (AUP). Typically, parking waiver applications have come from small-scale, individually operated medical practitioners or food service providers without the capital on hand to withstand uncertainty and time delays during the startup process.

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

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

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<sup>5</sup> See, City of Berkeley Municipal Code, *C-SA South Area Commercial 23E.52.020 Purposes*, including goals such as: "increase the opportunities for the establishment of businesses which are owned and operated by local residents, provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area, encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley" and *C-E Elmwood Commercial District Provisions 23E.44.020 Purposes*, including "providing locations for retail goods and service establishments to serve surrounding neighborhoods, and permitting other uses which serve this objective."

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

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

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

**Background:** The Zoning Ordinance currently includes three restaurant categories: carry out, quick and full service. These categories were created when the City adopted the 1999 update to the Zoning Ordinance, which condensed several additional food categories into the categories that exist now. The expanded categories originated in the early 1980s to support commercial district-specific quotas. In 2015, the quotas themselves were removed in all commercial districts (save for the Elmwood which still maintains a cap on the total number of food establishments, but no distinctions by type). Currently, the application of these categories for prospective food purveyors can cause confusion for the public, and difficulty for businesses that seek to slightly adapt their business model.

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

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

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

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

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

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

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

**Background:** The use table in C-prefixed districts is typically followed by a clause indicating that “any use not listed that is compatible with the purposes of [the district] shall be permitted subject to securing [an AUP or a UP].” The level of discretionary review varies by district. Staff has observed that this clause is especially relevant to businesses with hybrid business models, where the secondary use is not necessarily included among the listed incidental uses. Staff has observed an increase in business models that employ a combination of retail and/or food consumption with entertainment, recreational activities, or other complementary uses. As the prevalence of online purchases for soft goods increases, these new, creative, experiential commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts.

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

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

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

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

**Recommendation:** Staff recommends reducing the level of discretionary review for commercial recreation uses across all C-prefixed districts in the same manner that was approved in the Downtown Core District (C-DMU) in 2016.<sup>7</sup> These levels are listed in the table below:

| Area                                   | Discretionary Permit |
|--|----------------------|
| Under 5,000 ft <sup>2</sup>            | ZC                   |
| Between 5,000 – 10,000 ft <sup>2</sup> | AUP                  |
| Over 10,000 ft <sup>2</sup>            | UPPH                 |

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

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

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

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

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

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

## DISCUSSION

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

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

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

**CONCLUSION**

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

**ATTACHMENTS**

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





| Land Use Designation    | Zoning District | Type              | Threshold           | Permit |
|-------------------------|-----------------|-------------------|---------------------|--------|
| Neighborhood Commercial | C-N             | Carry Out         | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Full Service      | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         | C-NS            | Carry Out         | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Full Service      | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         | C-SA            | Carry Out         | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
|                         |                 | Full Service      | < 1,000 sq. ft.     | ZC     |
|                         |                 |                   | > 1,000 sq. ft.     | AUP    |
| C-SO                    | Carry Out       | < 1,000 sq. ft.   | ZC                  |        |
|                         |                 | > 1,000 sq. ft.   | AUP                 |        |
|                         | Quick Service   | < 1,000 sq. ft.   | ZC                  |        |
|                         |                 | > 1,000 sq. ft.   | AUP                 |        |
|                         | Full Service    | < 1,000 sq. ft.   | ZC                  |        |
|                         |                 | > 1,000 sq. ft.   | AUP                 |        |
| C-E*                    | Carry Out       | 1,000 sq. ft. max | AUP                 |        |
|                         | Quick Service   | 1,000 sq. ft. max | AUP                 |        |
|                         | Full Service    |                   | AUP                 |        |
| Avenue Commercial       | C-1             | Carry Out         | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         |                 | Full Service      | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         | C-T             | Carry Out         | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | UPPH   |
|                         |                 | Full Service      | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         | C-W             | Carry Out         | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | AUP    |
|                         |                 | Quick Service     | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | > 1,500 sq. ft.     | UPPH   |
|                         |                 | Full Service      | < 1,500 sq. ft.     | ZC     |
|                         |                 |                   | 1,501-2,500 sq. ft. | AUP    |
| > 2,501 sq. ft.         | UP(PH)          |                   |                     |        |

| Land Use Designation | Zoning District | Type          | Threshold       | Permit          |
|----------------------|-----------------|---------------|-----------------|-----------------|
| Downtown             | C-DMU           | Carry Out     | < 2,000 sq. ft. | ZC              |
|                      |                 |               | > 2,000 sq. ft. | AUP             |
|                      |                 |               | Within A.D.O.   | AUP             |
|                      |                 | Quick Service | < 2,000 sq. ft. | ZC              |
|                      |                 |               | > 2,000 sq. ft. | AUP             |
|                      |                 | Full Service  | < 4,000 sq. ft. | ZC              |
| > 4,000 sq. ft.      | AUP             |               |                 |                 |
| Mixed Use            | MU-LI           | Carry Out     | < 5,000 sq. ft. | AUP             |
|                      |                 |               | > 5,000 sq. ft. | UP(PH)          |
|                      |                 | Quick Service | < 5,000 sq. ft. | AUP             |
|                      |                 |               | > 5,000 sq. ft. | UP(PH)          |
|                      |                 | Full Service  | --              | UP(PH)          |
|                      |                 | MU-R          | Carry Out       | < 5,000 sq. ft. |
|                      | > 5,000 sq. ft. |               |                 | UP(PH)          |
|                      | Quick Service   |               | < 5,000 sq. ft. | AUP             |
|                      |                 |               | > 5,000 sq. ft. | UP(PH)          |
|                      | Full Service    | --            | UP(PH)          |                 |

\* C-E has a limit of 25 food service establishments within the district