



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, November 7, 2018
7:00 PM

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

See “*MEETING PROCEDURES*” below.

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

PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Lacey, Mary Kay, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by, Councilmember Hahn, District 5
Kapla, Robb William, for Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Worthington, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: December 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 October 3, 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: Local Hazard Mitigation Plan (LHMP) Presentation**
Recommendation: Staff from Office of Emergency Services will explain the LHMP and Planning Commission's role.
Written Materials: N/A.
Web Information: N/A.
Continued From: N/A.
- 10. Action: Public Hearing: Referral Response to Amending Home Occupation Chapter 23C.16**
Recommendation: Hold public hearing and consider Zoning Ordinance amendments to the Home Occupation chapter and Use Permitted Tables in applicable zoning districts.
Written Materials: Attached.
Web Information: N/A.
Continued From: 9/5/2018.
- 11. Action: 2018-2019 Planning Commission Work Plan**
Recommendation: Approve Work Plan memo to be submitted to the City Council.
Written Materials: Attached.
Web Information: N/A.
Continued From: 10/3/2018.
- 12. Action: 2019 Planning Commission Calendar**
Recommendation: Approve 2019 Planning Commission Calendar.
Written Materials: Attached.
Web Information: N/A.
Continued From: N/A.
- 13. Action: Community Recreation Center Permit Threshold Clarification**
Recommendation: Review and endorse staff's technical amendment to the Zoning Ordinance amendments that support small businesses.
Written Materials: Attached.
Web Information: N/A.
Continued From: 10/3/2018.

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:

- 2018-11-07 – 2018 Housing Trust Fund RFP: Applications Received – Jenny Wyant, Community Development Project Coordinator

Late Communications: None.

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

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

Consent Calendar Guidelines:

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

Procedures for Correspondence to the Commissioners:

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

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

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

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

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

Please refrain from wearing scented products to public meetings.

DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
October 3, 2018

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

Location: North Berkeley Senior Center, Berkeley, CA

1. ROLL CALL:

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

Commissioners Absent: Benjamin Beach (excused)

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

2. ORDER OF AGENDA: No changes.

3. PUBLIC COMMENT PERIOD: No speakers.

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

Communication in the Packet: None.

Late Communications (Received after the Packet deadline):

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

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

31 **5. CHAIR REPORT:** None.

32 **6. COMMITTEE REPORT:** No subcommittee met since the last Planning Commission
33 meeting.

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Vincent/Fong) to approve the Planning Commission Meeting Minutes
36 from September 5, 2018 with amendment to motion from Item 9. Ayes: Martinot, Schildt, Fong,
37 Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None. Absent: Beach. (8-0-0-
38 1)

39
40 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next
41 meeting, on November 7th, the following items will be on the agenda: 1) presentation and
42 introduction of the update to the Local Hazard Mitigation Plan, 2) Public Hearing on the
43 amendments to the Home Occupation chapter, 3) Planning Commission will discuss the
44 2018-2019 Work Plan that the subcommittee developed on October 17th.

45 **AGENDA ITEMS**

46 **9. Action:** **Public Hearing: Zoning Ordinance Amendments Supporting**
47 **Small Businesses**

48 Staff presented a brief background of the responsibilities and goals of the Office of Economic
49 Development, and then reviewed the following six zoning ordinance amendment
50 recommendations.

- 51 1. Remove requirement to provide incremental change in parking spaces associated with a
52 change of use in the Commercial Districts;
53 2. Condense existing food service categories (Carry-out, Quick-service, and Full-service)
54 into a single category (Food Service Establishments);
55 3. Standardize change of use square footage thresholds in Commercial Districts;
56 4. Reduce the level of discretion from a UPPH to an AUP when establishing a “use deemed
57 compatible” in a Commercial District;
58 5. Apply the permitting thresholds for Commercial Recreation Centers in the C-DMU to all
59 Commercial Districts; and
60 6. Allow the incidental service of beer and wine at food service establishments with a
61 Zoning Certificate and conformance to performance standards.

62 The Planning Commission asked clarifying questions throughout the staff presentation and
63 then opened the public hearing. The Commission discussed the 6 zoning ordinance
64 amendments to support small businesses. They focused on the recommendations #2 and #5
65 that needed a decision on square footage thresholds or levels of discretion. The Commission
66 discussed adding a larger radius for noticing of restaurant uses, and made the following
67 motions:

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

71
72 Motion/Second/Carried (Schildt/Kapla) to recommend to Council to approve all six of staff's
73 recommendations, with the following amendments: 1) change Recommendation #2 to require
74 an AUP for Food Service Establishments in the C-DMU that are greater than 3,000 sq. ft.; 2)
75 amend Recommendation #5 to require an AUP for all Commercial Recreation Centers in
76 Neighborhood Commercial districts; and 3) require a 300 ft. radius of noticing for AUPs for
77 Food Service Establishments in Neighborhood Commercial districts. The Planning
78 Commission also directs the Office of Economic Development to continue outreach with
79 neighborhood (resident) groups through resources in the City Manager's Office. Ayes:
80 Martinot, Schildt, Fong, Kapla, Vincent, Lacey, Pinto and Wrenn. Noes: None. Abstain: None.
81 Absent: Beach. (8-0-0-1)

82
83 Public Comments: 3 speakers.

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

87
88 **12. Discussion: Council Referral: Auto Sales in C-SA District**

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

96 Public Comments: 9 speakers.

97 **10. Discussion: Planning Commission 2018-2019 Work Plan**

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

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

106
107 Public Comments: None.

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

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

111 Public Comments: None.

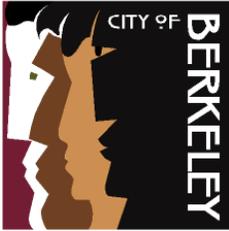
112 **The meeting was adjourned at 10:08 pm**

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

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

115 **Public Speakers: 12 speakers**

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



Planning and Development Department
 Land Use Planning Division

STAFF REPORT

DATE: November 7, 2018

TO: Members of the Planning Commission

FROM: Sydney Stephenson, Assistant Planner

SUBJECT: Public Hearing to Consider Amendments to the Home Occupation Chapter (BMC 23C.16)

SUMMARY

The proposed amendments to Berkeley Municipal Code (BMC) Chapter 23C.16 – *Home Occupations* respond to a City Council referral from December 6, 2011, as well as, additional modifications identified by staff. In September, 2018, the Planning Commission discussed the proposed approach and requested staff draft Zoning Ordinance amendments for a Public Hearing (see Attachment 1: Public Hearing Notice Home Occupation Amendments). In this report the Background section explains the existing regulations and the City Council referral. The Discussion section presents the proposed amendments and the staff’s rationale. The Planning Commission is asked to discuss the proposed amendments and provide a recommendation to the City Council (Council).

BACKGROUND

Home Occupations are small-scale businesses conducted on a residential property as an incidental or secondary land use. Presently, the Zoning Ordinance classifies Home Occupations (HOs) into three categories:

HO Category	Level of Discretion ¹	Customer Visits	Storage and/or Handling of Goods
Low-Impact	ZC	Not Allowed	Not Allowed
Moderate-Impact	UP(PH)	Allowed	Allowed
Teaching-Related	AUP	Four or fewer students allowed at a time	Not Allowed

Regardless of category, all HOs must:

¹ ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

1. Be conducted entirely within the dwelling unit or group living accommodation room.
2. Occupy less than 20% or 400 square feet of the unit.
3. Not generate offensive noise, orders or other nuisances.
4. Not handle or generate hazardous materials.

On December 6, 2011, City Council (Council) referred to the City Manager a set of amendments that reduce the level of discretion for Moderate Impact Home Occupations (see Attachment 2). This referral proposes to amend BMC Section 23C.16.030 to allow five or fewer customer visits per day for Moderate Impact HOs with an AUP; thereby creating a similar discretionary path for Teaching-Related and Moderate Impact HOs that have limited customer visits.

At the September 5, 2018 Planning Commission (PC) meeting, staff proposed modifications to the Home Occupations chapters (23C.16) to respond to the referral (see Attachment 3 for Staff Report). The Planning Commission requested staff draft Zoning Ordinance amendments that address the level of discretion, number of customer visits, location of HO operations, handling of goods, and overall ordinance organization and structure. While drafting the Zoning Ordinance amendments, staff identified additional modifications to the Home Occupation chapter that are often addressed through Zoning Ordinance interpretations. These include hours of operation, non-resident employees, and advertising. Details are provided in the following section.

DISCUSSION

Draft Zoning Ordinance amendments can be found in Attachment 4 (Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations and Use Tables in Applicable Zoning Districts). Amendments are grouped into eight subject areas – each one providing a list of proposed changes and a discussion of staff rationale. The Planning Commission is asked to discuss and consider these Zoning Ordinance amendments.

1. Customer/Client Visits:

Proposed Changes:

- 1) Allow a Low Impact HO no more than five visits per day, with no more than one client at a time, with an issuance of a Zoning Certificate. (*Modify Section 23C.16.020*)
- 2) Allow a Moderate Impact HO six or more visits per day, with no more than four clients at a time, with an issuance of an Administrative Use Permit. (*Modify Section 23C.16.030.B*)
- 3) Remove Teaching-Related HO as a HO category. (*Modify Section 23C.16.030.A*)

Staff Rationale:

The proposed changes reflect the current business needs and operations in Berkeley. Based on anecdotes and personal experience, staff believes that many existing Low Impact HOs receive customer/client visits. The lack of complaints associated with these business operations suggests a limited number of visits are appropriate for Low Impact

HOs. The proposed changes allow a limited number of visits for a Low Impact HO with a Zoning Certificate.

At this time, there have been no UP(PH) applications submitted for Moderate Impact HOs. Review of the permit application history for HOs raises the question of whether Berkeley's HO thresholds are appropriate to allow legal operation of home businesses and whether the City's regulations reflect common home business models that exist in the Bay Area. Thus, the proposed change lowers the level of discretion for a Moderate Impact HO from a Use Permit to an Administrative Use Permit (AUP). As discussed below, the AUP for a Moderate Impact HO will be subject to specific Findings to address parking and traffic impacts.

With the above changes, the Teaching-Related HO can be removed because this use can be regulated as either Low Impact or Moderate Impact, depending on the number and type of customer/client visits. The proposed changes would maintain consistent discretion between the different categories of HOs and appropriately matches level of discretion to level of impact.

2. Accessory Buildings:

Proposed Changes:

- 1) Allow HOs in Accessory Buildings. (*Modify Section 23C.16.010*)
- 2) Apply square footage limitation for HOs to Accessory Buildings. (*Modify Section 23C.16.010*)

Staff Rationale:

In order to align with current best practices in other cities and to allow all Berkeley HOs to operate legally, staff recommends HOs be allowed in Accessory Buildings. This change will benefit many business owners. For example, it is common for artists to have their studios in Accessory Buildings (detached from the main dwelling). Under existing regulations these artists cannot hold art classes within their studios; however, under the proposed regulations, these types of activities will be legal.

Staff believes allowing HOs in Accessory Buildings would maintain consistency with the definition of an Accessory Building². Since HOs are considered an Incidental Use, allowing HOs in Accessory Buildings would be consistent with existing definitions. To maintain the incidental nature of a HO, the square footage limitation of 400 square feet or 20% of the building that the HO occupies would apply to Accessory Buildings.

3. On-site Goods:

Proposed Changes:

² Accessory Building definition per BMC 23F.04.010: A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

- 1) Allow business-related activities, including handling, processing, storage, and transport of goods on-site. Do not allow these activities outdoors. (*Modify Section 23C.16.010*)

Staff Rationale:

Currently, Berkeley's practice is to allow HOs store and handle goods on a case by case basis, even though the Home Occupations chapter precludes the "storage, service, repair, handling or transport of good or products on or at the subject premises." The HO Ordinance does not provide guidance on what constitutes a "good or product." Many home-based businesses involve production and transport of goods, where the quality or size of the product is such that the HO will not have significant impact on the surrounding neighborhood. Examples of these HO businesses include: graphic artist/photographer printing from a computer; painter/craftsperson preparing small-scale artwork; accountant/attorney/consultant preparing reports and documents; and preparation of cottage foods.

The intent of the HO provisions was not to require a Use Permit for any and all "products" and activities at residential locations, but rather to prohibit those which would have the potential for significant neighborhood impact. After researching other jurisdictions' regulations and reviewing approved Low Impact HOs, staff determined that the majority of home businesses operate with "products" and do impact neighborhoods. Therefore, instead of requiring a staff interpretation of the Home Occupation chapter, staff believes that storage and handling (and other related activities) of goods and products within the area of the HO should be allowed. Staff also recommends prohibiting outdoor storage of goods and products.

4. Visiting Hours:

Proposed Changes:

- 1) Establish hours of 10am-8pm for customer/clients visits for all HOs. (*Modify Sections 23C.16.010 and 030*)

Staff Rationale:

Customer/client visits associated with Teaching-related HOs are currently set at 10am to 10pm. The proposed Zoning Ordinance amendment expands allowable customer/client visits to all HOs and resets the hours to a neighborhood friendly standard of 10am to 8pm. These hours are intended to reduce impacts to neighbors.

5. Non-resident Employees:

Proposed Changes:

- 1) Allow only residents of the subject property to conduct HO business-related activities onsite. (*Modify Section 23C.16.010*)

Staff Rationale:

Section 23F.04.010 (Definitions) states that HOs must be “operated only by the inhabitants of the subject residence.” Staff proposes reiterating this requirement in the HO Chapter for clarity and consistency.

6. Advertising Signs:

Proposed Changes:

- 1) Add language to prohibit on-site signs advertising the HO. (*Modify Section 23C.16.010*)

Staff Rationale:

Best practices from other cities (including Santa Monica, Walnut Creek, Palo Alto, Oakland, and Pasadena) support prohibitions of on-site signs that advertise the HO business.

7. Restructure and Reformat Chapter:

Proposed Changes:

- 1) Consolidate repetitive language. (*Modify Sections 23C.16.010, 020, and 030*)
- 2) Remove sections “Complaints and Imposition of Conditions,” “Home Occupations in Rental Unit,” “Medical Cannabis Residential Cultivation.” (*Modify Sections 23C.16.040, 050, and 060*)
- 3) Move all “Findings” for HOs to the Home Occupations chapter. (*Modify Sections 23E.84.090.G and 23C.16.030*)

Staff Rationale:

Currently, the Home Occupations chapter (BMC 23C.16) is broken into six sections. The first section (010) lists the requirements applicable to all HOs. The second two sections (020 and 030) discuss the requirements for low-impact HOs and moderate-impact HOs (including teaching-related HOs). The last three sections (040, 050, and 060) include language regarding complaints, rentals, and medical cannabis residential cultivation.

Staff proposes to take the opportunity to update the format and language of the Home Occupation Ordinance to provide more comprehensible regulations to the public. The reformatting would include consolidating repeated language, removing unnecessary language, and restructuring the format of the chapter as discussed below.

- 1) Currently, HO requirements regarding the square footage limit, prohibiting the use hazardous materials and processes, and prohibiting the creation of offensive and objectionable noise, vibration, etc. are located in both the Low Impact HO (020) and the Moderate Impact HO sections (030). Thus, staff proposes moving the repetitive language to section 010, which will become “General Requirements for Home Occupations.”
- 2) Staff also proposes removing sections “Complaints and Imposition of Conditions,” “Home Occupations in Rental Unit,” “Medical Cannabis Residential Cultivation.” This decision was arrived at after discussing the chapter with multiple staff

members. The “Complaints and Imposition of Conditions” section (040) can be removed because it contains language regarding how to deal with complaints and issues regarding Zoning Certificates and Use Permits or AUPs. This language is unnecessary because the procedure to handle issues with Zoning Certificates is already stated in the Zoning Conformance Review chapter, in section 23B.20.060.B. In addition, the process to deal with issues or complaints for Use Permits or AUPs is stated in Chapters 23B.28 and 23B.32. The “Home Occupations in Rental Unit” section (050) can be removed because it contains notification requirements for use permits which can be found in other chapters of the Zoning Ordinance. However, the first sentence of the section regarding allowance of HOs in rental units will be retained and moved to the “General Requirements for Home Occupations” section. The “Medical Cannabis Residential Cultivation” section (060) can be removed because language regarding personal cultivation of cannabis (medicinal and adult use) are stated in Title 12 of the Berkeley Municipal Code.

- 3) Currently, the “Findings” section (090) of the MU-R district contains language regarding specific findings for HOs in this district, these findings are found nowhere else in the Zoning Ordinance. Staff believes that these findings are important to make in the future for Administrative Use Permits allowing Moderate Impact HOs because they relate to parking and traffic impacts. Thus, staff proposes moving these findings to a new section of the Home Occupations chapter.

8. Uses Permitted Tables:

Proposed Changes:

- 1) Modify the “Accessory Uses and Structures” sections of the Uses Permitted tables in all Residential districts to remove the Teaching-related HO category and revise the level of discretion for Moderate HOs from UP(PH) to AUP. (*Modify Sections 23D.16.030, 23D.20.030, 23D.24.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030*)
- 2) Modify the “Residential and Related Uses” sections of the Uses Permitted tables in the C-W and the MU-R districts to remove the Teaching-related HO category and revise the level of discretion for Moderate Impact HOs from UP(PH) to AUP. (*Modify Sections 23E.64.030 and 23E.84.030*)

Staff Rationale:

Since the proposed amendments change the level of discretion for Moderate Impact HOs and removes the category of Teaching-related HOs, the Uses Permitted tables in the affected districts (all Residential districts and C-W and MU-R) must be revised.

NEXT STEPS

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

ATTACHMENTS

1. Public Hearing Notice
2. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
3. Planning Commission Staff Report – September 5, 2018
4. Zoning Ordinance Amendments to Modify Chapter 23C.16 Home Occupations and Use Tables in Applicable Zoning Districts



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

Amendments to the Home Occupation Ordinance: Allow for Customer/Client Visits, Allow for Home Occupations in Accessory Buildings and Accessory Dwelling Units, Allow for Handling, Processing and Storage of Goods within the Building, and Restructure Home Occupation Ordinance.

Berkeley Municipal Code (BMC) Chapters 23C.16, 23D.16, 23D.20, 23D.24, 23D.28, 23D.32, 23D.36, 23D.40, 23D.44, 23D.48, 23D.52, 23E.64, and 23E.84

The Planning Commission, of the City of Berkeley, will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, November 7, 2018**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: The proposed amendments to Berkeley's Zoning Ordinance (Title 23) respond to City Council's December 6, 2011, Referral to reduce the level of discretion for Moderate Impact Home Occupations. The amendments allow for customer/client visits for all levels of Home Occupations; allow Home Occupations in Accessory Buildings; reclassify Teaching-Related Home Occupations as Moderate Impact Home Occupations; allow for handling, processing and storage of goods on-site; and establish hours of operations for Home Occupations. Amendments simplify the structure and language of the Home Occupation Ordinance.

Full text of Zoning Ordinance Amendments can be found on the Planning Commission's homepage (https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx). Changes to be considered apply to the Home Occupation Ordinance (BMC 23C.16), all Residential districts, and the West Berkeley Commercial district (C-W) and Mixed Use-Residential district (MU-R), and are summarized below (the Planning Commission may further amend the language of the proposed ordinance):

- Modify permit requirements for Low Impact/Moderate Impact Home Occupations with respect to number of customer/client visits;
- Allow Home Occupations in Accessory Buildings;
- Allow for handling, processing and storage of good on-site (but not outdoors); and
- Establish hours of 8am-8pm for customer/client visits.

LOCATION: Affected districts include: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-W, and MU-R. The zoning map is available online: http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that the proposed amendments to the Home Occupation Ordinance and Residential districts would not have significant effects on the environment because any proposed discretionary project would be subject to independent CEQA review.

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments concerning this project should be directed to:

Planning Commission
Alene Pearson, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7489
E-mail: apearson@cityofberkeley.info

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

COMMUNICATION ACCESS

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

FURTHER INFORMATION

Questions should be directed to **Alene Pearson**, at (510) 981-7489, or apearson@cityofberkeley.info. Past and future agendas are also available on the Internet at: https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx



Linda Maio
District 1

CONSENT CALENDAR
December 6, 2011

To: Honorable Mayor and Members of the City Council
From: Councilmember Linda Maio
Subject: Classify Home Occupation Activities Receiving Five or Fewer Visits as Moderate Impact Home Operation

RECOMMENDATION

Refer to the City Manager that the zoning code for Moderate Impact Home Operation (Moderate Impact HO) be amended to include home occupation activities receiving five or fewer visits weekly, requiring an AUP rather than a Use Permit with public hearing.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

Years ago, the City changed the regulations to allow teaching, up to four students at a time, with a Moderate Impact HO, which is an AUP, rather than a Use Permit with public hearing. Zoning Code section 23C.16.030 reads as follows, and is applicable to home occupation activities receiving five or fewer visits weekly:

23C.16.030 Moderate Impact Home Occupations Subject to Use Permit

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
 - a. Be conducted entirely within the dwelling unit or group living accommodation room;
 - b. Operate within the hours of 10 a.m. and 10 p.m.; and
 - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:

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Classify Home Occupation Activities Receiving Five or Fewer Visits
as Moderate Impact Home Operation

CONSENT CALENDAR
December 6, 2011

- a. Involve more than four students at a time;
- b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
- c. Involve hazardous materials, or processes; or
- d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections [23C.16.020.B.1](#) and [23C.16.020.B.2](#), may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

Given that we permit 4 students at a time, which could amount to many more per day, enabling 5 visits or fewer per day with an HO designation, for other home occupation visitors seems eminently reasonable.

CONTACT PERSON
Linda Maio

District 1

(510) 981-7110



Planning and Development Department
Land Use Planning Division

Item 10
September 5, 2018

STAFF REPORT

DATE: September 5, 2018

TO: Members of the Planning Commission

FROM: Sydney Stephenson, Assistant Planner

SUBJECT: Referral Response: Amending Moderate Impact Home Occupation Regulations

INTRODUCTION

On December 6, 2011, City Council (Council) referred to the City Manager a set of amendments that reduce the level of discretion for Moderate Impact Home Occupations (see Attachment 1). In researching this referral, staff identified additional modifications to Berkeley Municipal Code (BMC) Chapter 23C.16 (Home Occupations) that better reflect the current practices and needs of home-businesses operating in Berkeley. Questions regarding potential amendments are presented in the Discussion section for the Planning Commission to consider.

BACKGROUND

Home occupations are small-scale businesses conducted on a residential property as an incidental or secondary land use. Presently, the Zoning Ordinance classifies home occupations (HOs) into three categories:

HO Category	Level of Discretion ¹	Customer Visits	Storage and/or Handling of Goods
Low-Impact	ZC	Not Allowed	Not Allowed
Moderate-Impact	UP(PH)	Allowed	Allowed
Teaching-Related	AUP	Four or fewer students allowed at a time	Not Allowed

Regardless of category, all HOs must:

1. Be conducted entirely within the dwelling unit or group living accommodation room.
2. Occupy less than 20% or 400 square feet of the unit.

¹ ZC = Zoning Certificate; AUP = Administrative Use Permit; UP(PH) = Use Permit with Public Hearing

3. Not generate offensive noise, orders or other nuisances.
4. Not handle or generate hazardous materials.

Referral Summary

The referral in this report intends to introduce more consistent regulations surrounding customer visits to HOs. Currently HOs that do not involve customer visits are classified as low-impact and can be established with a ZC. HOs that involve customer visits are classified as moderate-impact and require a UP(PH), *unless they are teaching-related*. Teaching-related HOs require less discretion – an AUP – and allow four students visitors per lesson. This referral proposes to amend BMC Section 23C.16.030 to allow five or fewer customer visits per day for moderate impact HOs with an AUP; thereby creating a similar discretionary path for teaching-related and moderate impact HOs that have limited customer visits.

Zoning Regulation History

Prior to the Zoning Ordinance update in 1999, moderate-impact HOs that involved non-resident employees, customer visits, or storage of products on premises were allowed with an AUP. Staff and the Planning Commission recommended maintaining this level of discretion; however, the Zoning Adjustments Board proposed requiring a UP(PH) and Council approved this proposal (see Attachment 2). The most recent revision to this chapter was in 2006, when the teaching-related HO regulations were added.

Home Occupation Permit Application History:

Since January of 2018, the City has approved approximately 116 Zoning Certificates for low-impact HOs. Low-impact HOs are mostly for home office businesses, but also include other businesses like dog walking, cottage foods, graphic designing, jewelry-making, and life-coaching. Since 2006, the City has only received six AUPs for teaching-related HOs, two of which were submitted this year. At this time, there have been no UP(PH) applications submitted for moderate-impact HOs. Staff believes that permit activity might inaccurately represent Berkeley's home business inventory and operations.

Review of permit application history for HOs raises the questions of whether Berkeley's HO thresholds are appropriate to allow legal operation of home businesses and whether the City's regulations reflect common home business models seen in the Bay Area and the rest of the state.

Home Occupations in Other Jurisdictions:

Attachment 3 provides a summary of current HO regulations for Santa Monica, Walnut Creek, Palo Alto, Oakland, and Pasadena. As seen in Attachment 3, Berkeley's regulations are less permissive with respect to HO visits, HO location, and storage and handling of goods. For example, the majority of other jurisdictions allow HO customer/client visits by-right, whereas Berkeley requires an AUP or UP(PH). Most other jurisdictions allow HOs to operate out of Accessory Buildings, whereas Berkeley only permits HOs dwelling units and group living accommodations. Finally, most jurisdictions

allow storage and handling of goods indoors, whereas Berkeley's ordinance prohibits the storage and/or handling of goods on-site.

The discussion section of the report identifies the Zoning Ordinance amendments that the 2011 Council referral addresses, as well as, other possible amendments that meet the needs of current home business models and reflects best practices seen in other cities.

DISCUSSION

The 2011 Council referral requested that Moderate-Impact Home Occupations with five or fewer client/customer visits per day be allowed with an AUP. This also means that HOs with more than five visits or storage and handling of goods on-site would continue to require a UP(PH).

Since adoption of the Home Occupation chapter, in 1999, the number of home-based workers increased from 7.0% in 1997 to 9.5% in 2010². The types of home business have also evolved from home offices to include craft-based and cottage food-based businesses. In researching other jurisdictions and current home business practices in Berkeley, staff identified four additional amendments to the Berkeley Home Occupation chapter to better reflect the current practices and needs of home-businesses operating in Berkeley.

Staff-identified amendments include:

- 1) expanding customer/client visits to not only teaching-related HO businesses;
- 2) allow HO businesses in Accessory Buildings and Accessory Dwelling Units;
- 3) allow handling, processing, and storage of goods on-site (except for outdoors); and
- 4) reformatting the ordinance by consolidating information and requirements.

Discussion of each amendment is presented below. Planning Commission is asked to discuss and provide direction:

1. Customer/Client Visits:

Current Situation:

Many Berkeley residents run home businesses, as demonstrated by the 116 low impact HO permits approved in 2018. Based on anecdotes and personal experience, staff believes that many of these HOs receive customer visits and should be classified as moderate-impact. The referral asks the PC to reconsider zoning regulations with respect to level of discretion and allowable number of customer visits.

Existing Zoning Regulations

- Low-impact HOs (permitted with a ZC) do not allow customer visits.
- Teaching-related HOs (permitted with an AUP) allow student visits (four at a time).
- Moderate-impact HOs (permitted with a UP(PH)) allow customer visits.

² <https://www.census.gov/prod/2012pubs/p70-132.pdf>

Policy Questions

1. What is the appropriate level of discretion for moderate-impact HOs with customer/client visits?
2. Should there be a maximum number of customer visits if allowed for low-impact and moderate-impact HOs?

Proposed Changes and Staff Rationale:

Referral Request: Moderate-impact HOs (permitted with an AUP) allow five visits per day. Teaching-related HOs allow for four students at a time, which could amount to many more per day and are allowed with an AUP. This option maintains consistent discretion between different categories of HOs, realistically reflects business needs and operations, and appropriately matches level of discretion to level of impact.

Alternate Approach: Low Impact HOs (permitted with ZC) allow four visits per day and Moderate Impact HOs (permitted with AUP) allow five or more visits per day. This option goes further than the referral request, allowing a limited number of customer visits with a ZC. This proposal reflects similar regulations seen in other jurisdictions.

2. HO in Accessory Buildings:

Current Situation

Many Berkeley residents run businesses as HOs on their properties. Based on 2016 data, 10.9% of Berkeley residents work from home³. Based on anecdotes, staff has learned that many of these HOs operate out of detached garages and other accessory buildings.

Existing Zoning Regulations

- HOs must operate entirely within a dwelling unit or group living accommodation room.
- HOs must occupy less than 400 square feet and 20% of the unit.
- HOs are not allowed in in accessory buildings or garages.

Policy Questions:

1. Should HOs be allowed to operate in Accessory Buildings?
2. If yes, should different size thresholds apply to dwelling units and Accessory Buildings?

Proposed Changes and Staff Rationale

In order to align with current best practices in other cities and allow Berkeley HOs to operate legally, staff recommends HOs be allowed in Accessory Buildings. For example, it is common for artists to have their studios in Accessory Buildings (detached from the main dwelling), thus under existing regulations these artists cannot hold art classes within their studios. Staff believes allowing HOs in Accessory Buildings would maintain consistency with the definition of an Accessory Building:

³ <http://www.vitalsigns.mtc.ca.gov/commute-mode-choice#chart-2>

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A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot. Since HO's are considered an Incidental Use, allowing HO's in Accessory Buildings would be consistent with existing definitions.

3. Storage and handling of goods on-site:

Current Situation

Currently, Berkeley's practice is to allow HO's store and handle goods on a case by case basis, even though the Home Occupations chapter precludes the "storage, service, repair, handling or transport of good or products on or at the subject premises." Many home-based businesses involve production and transport of goods, where the quality or size of the product is such that the home occupation will not have significant impact on the surrounding neighborhood. Examples of these HO businesses include: graphic artist/photographer printing from a computer; painter/craftsperson preparing small-scale artwork; accountant/attorney/consultant preparing reports and documents; and preparation of cottage foods. Also note that State law allows "cottage foods" to be made in private homes and sold to the public according to the California Homemade Food Act (AB1616) which became effective in 2013.

Existing Zoning Regulations

- Low-impact and teaching-related HO's may not "involve the storage, service, repair, handling or transport of goods or products on or at the subject premises."
- Moderate-impact HO's that involve products onsite require a UP(PH).

Policy Questions

1. Should HO's be allowed to store and handle goods within the area of the HO?

Proposed Changes and Staff Rationale

The HO Ordinance does not provide guidance on what constitutes a "good or product." The intent of the HO provisions was not to require a Use Permit for any and all "products" at residential locations, but rather to prohibit those which would have the potential for significant neighborhood impact. After researching other jurisdictions' regulations and reviewing approved low-impact home occupations, staff determined that the majority of home businesses operate with "products" do not cause significant detrimental impacts to the neighborhood. Therefore, instead of requiring an interpretation of the HO Ordinance, staff believes that storage and handling of goods and products within the area of the HO should be allowed. Staff also recommends prohibiting outdoor storage of goods and products.

4. Restructuring and Consolidating Ordinance:

Current Situation

Currently, the Home Occupations chapter (BMC 23C.16) is broken into six sections. The first section (010) lists the requirements applicable to all HO's. The second two sections

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(020 and 030) discuss the requirements for low-impact HOs and moderate-impact HOs (including teaching-related HOs). The last three sections (040, 050, and 060) include language regarding complaints, rentals, and medical cannabis residential cultivation.

Existing Zoning Regulations

See Attachment 4 of the BMC Home Occupations chapter (BMC 23C.16).

Proposed Changes and Staff Rationale

Staff proposes to take the opportunity to update the format and language of the Home Occupation Ordinance to provide more comprehensible regulations to the public. The reformatting would include consolidating repeated language and restructuring the format of the chapter.

NEXT STEPS

The next steps would be for the Planning Commission to direct staff to develop Zoning Ordinance language that reflects the Commission's discussion of policy questions and proposed changes. Staff will present proposed language to Planning Commission, before holding a Public Hearing.

ATTACHMENTS

1. Council Referral Moderate-Impact Home Occupation Referral – December 6, 2011
2. Council Report on Home Occupations – November 17, 1998
3. Other Jurisdictions Comparison Table
4. Current Home Occupations chapter (BMC 23C.16)

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Chapter 23C.16 HOME OCCUPATIONS¹

Sections:

- 23C.16.010 General Requirements for Home Occupations
- 23C.16.020 Home Occupation Classifications ~~Low Impact Home Occupations Permitted by Right Subject to Business License~~
- ~~23C.16.030~~ ~~Moderate Impact Home Occupations Subject to Use Permit~~
- ~~23C.16.0340~~ ~~Complaints and Imposition of Conditions~~
- ~~23C.16.0450~~ ~~Home Occupation in Rental Unit~~
- ~~23C.16.060~~ ~~Medical Cannabis Residential Cultivation~~
- 23C.16.030 Findings

23C.16.010 General Requirements for Home Occupations

A. The establishment of Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a Dwelling Unit, but rather shall be considered a lawful Incidental Use thereof.

B. All Home Occupations shall be subject to the following requirements:

1. No Home Occupation which involves a Firearm/Munitions Business may be allowed.
2. No Home Occupation which involves customer visits may be allowed in the ES-R District.
3. A Home Occupation shall be allowed within a dwelling unit, group living accommodation room, or accessory building.
4. A Home Occupations shall occupy less than four hundred (400) square feet or less than twenty percent (20%) of the dwelling unit, group living accommodation room, or accessory building, in which the business would occupy.
5. Only residents of the subject property shall conduct Home Occupation business-related activities onsite.
6. Client or customer visits shall occur within the hours of 10 a.m. and 8 p.m.
7. A Home Occupation shall not conduct business-related activities outdoors of the subject building, including storage, service, repair, handling or transport of goods or products.
8. A Home Occupation shall not involve hazardous materials or processes.
9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises.
10. A Home Occupation shall not have on-site signs identifying or advertising the Home Occupation.
11. A Home Occupation is subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04

¹ Red strikeout = language removed

Red underlined = new language

Green underlined = new location of existing language

Green strikeout = old location existing language

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

12. A Home Occupation application may be filed by a lessee in possession of the property without the owner's signature.

~~23C.16.020 Home Occupation Classifications-Low Impact Home Occupations Permitted by Right Subject to Business License~~

- A. A Low Impact Home Occupation involves no more than five visits per day, with no more than one client at a time, and shall be allowed subject to issuance of a Zoning Certificate.
- B. A Moderate Impact Home Occupation involves six or more visits per day, with no more than four clients at a time, and shall be allowed subject to issuance of an Administrative Use Permit.

A Home Occupation which meets all of the following conditions shall be allowed by right in any Dwelling Unit or Group Living Accommodation room, subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

~~A.—Such Home Occupations must:~~

- ~~1.—Be conducted entirely within the dwelling unit or group living accommodation room;~~
- ~~2.—Occupy less than four hundred (400) square feet and less than twenty percent (20%) of the dwelling unit or group living accommodation room;~~

~~B.—Such home occupations may not:~~

- ~~1.—Involve customer visits to the subject premises;~~
- ~~2.—Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~
- ~~3.—Involve hazardous materials or processes; or~~
- ~~4.—Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit building, of the subject premises. (Ord. 6478 NS § 4 (part), 1999)~~

~~23C.16.030 Moderate Impact Home Occupations Subject to Use Permit~~

~~A.—A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.~~

~~1.—Such Home Occupations must:~~

- ~~a.—Be conducted entirely within the dwelling unit or group living accommodation room;~~
- ~~b.—Operate within the hours of 10 a.m. and 10 p.m.; and~~

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

~~e. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;~~

~~2. Such home occupations may not:~~

~~a. Involve more than four students at a time;~~

~~b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;~~

~~c. Involve hazardous materials, or processes; or~~

~~d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.~~

~~B. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04. (Ord. 6909-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)~~

~~23C.16.040 Complaints and Imposition of Conditions~~

~~A. Complaints regarding low-impact home occupations may be made to the Zoning Officer for review and enforcement action.~~

~~B. If written complaints that include factual information on detrimental effects to the neighborhood from a Home Occupation are received, the Board may schedule a public hearing to review the Home Occupation. After such hearing the Board may approve a Use Permit to impose conditions upon the Home Occupation as may be necessary to prevent detrimental effects or it may initiate revocation proceedings. (Ord. 6478-NS § 4 (part), 1999)~~

~~23C.16.050 Home Occupation in Rental Unit~~

~~Any application for a Home Occupation may be filed by a lessee in possession of the property without the consent of the owner of record of the legal title and the application may be accepted without such owner's signature. In the case of a home occupation which requires a Use Permit, the owner shall be given notice of the proposed home occupation, in conformance with Section 23B.32.020.D. (Ord. 6478-NS § 4 (part), 1999)~~

~~23C.16.060 Medical Cannabis Residential Cultivation~~

~~No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property. (Ord. 7068-NS § 4 (part), 12/08/08)~~

23C.16.030 Findings

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

In addition to the findings set forth in 23B.28.050.A, in order to approve an Administrative Use Permit for the establishment or expansion of a Moderate Impact Home Occupation ~~with customer visits and/or handling of goods~~, the Zoning Officer or Board must find:

1. The degree of customer visits ~~and/or handling of goods, taken as a whole~~, will not cause a significant detrimental impact on the availability of parking spaces in the location the Home Occupation is being established;
2. If the proposed Home Occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the Home Occupation is being established.

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

MU-R District Findings

23E.84.090 Findings

- A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. A proposed use or structure must:
1. Be consistent with the purposes of the District;
 2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
 3. Be consistent with the adopted West Berkeley Plan;
 4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;
 5. Be designed in such a manner to be supportive of the character and purposes of the District; and
 6. Be able to meet any applicable performance standards as described in Section [23E.84.070.H](#).
- C. In order to approve a Use Permit under Section [23E.84.040](#), the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:
1. For purposes of this section, such replacement space shall not qualify for exemption under Section [23E.84.040.I](#) or by reason of having been established after July 6, 1989;
 2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.
- D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section [23E.20.090](#) and must also make the following findings:

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;
 2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;
 3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.
- E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:
1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;
 2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.
- F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

~~G. In order to approve a Use Permit for the establishment or expansion of a home occupation with customer visits and/or handling of goods, the Zoning Officer or Board must find:~~

~~1. The degree of customer visits and/or handling of goods, taken as a whole, will not cause a significant detrimental impact on the availability of parking spaces in the location the home occupation is being established;~~

~~2. If the proposed home occupation will require loading space on a regular basis, such loading space will be available on the subject property, or that the use of on-street loading space will not cause a significant detrimental impact on the availability of parking spaces or on traffic flow in the location the home occupation is being established.~~

H. In order to approve a Use Permit for the establishment or expansion of a school, large family day care, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, large family day care or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;

2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;

3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, large family day care or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.

I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.

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- J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.
- K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:
1. The manufacturer is capable of meeting all applicable performance standards; and
 2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
- L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.
2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

R-1

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.16.030 is amended to read as follows:

23D.16.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

R-1A

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.20.030 is amended to read as follows:

23D.20.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required yards
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030-A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030-B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

R-2

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.28.030 is amended to read as follows:

23D.28.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

With Urban Agriculture	ZC	Subject to 23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

R-2A

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.32.030 is amended to read as follows:

23D.32.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	Subject to 23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030-A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030-B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

R-3

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.36.030 is amended to read as follows:

23D.36.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care/Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

R-4

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.40.030 is amended to read as follows:

23D.40.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060 .

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making of applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care, Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

R-5

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.44.030 is amended to read as follows:

23D.44.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care, Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

R-S

The “Accessory Uses and Structures” section of Berkeley Municipal Code Table 23D.48.030 is amended to read as follows:

23D.48.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Child Care, Family Day Care Small Family Day Care Homes: of eight or fewer children Large Family Day Care Homes: of nine to 14 children	ZC AUP	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Low Impact Moderate Impact, teaching- related Moderate Impact	ZC AUP UP(PH) AUP	If the requirements of Section Chapter 23C.16.020 are met Subject to the requirements of Section 23C.16.030-A Subject to the requirements of Section Chapter 23C.16.030-B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	Prohibited	
Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street

R-SMU

The "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.52.030 is amended to read as follows:

23D.52.030 Uses Permitted

Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

When located on a vacant lot without a Main Building	AUP	
With Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060
Accessory Dwelling Units in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings set forth in Section 23C.24.070
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care, Family Day Care Small Family Day Care Homes: of eight or fewer children Large Family Day Care Homes: of nine to 14 children	ZC AUP	
Fences Six ft. or less in height Exceeding six ft. in height	ZC AUP	In required setbacks
Home Occupations Low Impact Moderate Impact, teaching-related Moderate Impact	ZC AUP UP(PH) AUP	If the requirements of Section Chapter 23C.16.020 are met Subject to the requirements of Section 23C.16.030.A Subject to the requirements of Section Chapter 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	Prohibited	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Stores and Shops (Incidental to another Use)	UP(PH)	Contained within a building with no street access and no displays or merchandise visible from the street
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C-W

The “Residential and Related Uses” section of Berkeley Municipal Code Table 23E.64.030 is amended to read as follows:

23E.64.030 Uses Permitted

Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Additions, Major Residential	AUP	See definition in Sub-title 23F . Subject to required finding under Section 23E.64.090.G
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes of 8 or fewer children	ZC	
Large Family Day Care Homes of 9 to 14 children	AUP	
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes	ZC	
Community Centers	UP(PH)	
Dwelling Units	UP(PH)	Subject to Development Standards under Section 23E.64.070

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Group Living Accommodations	UP(PH)	Subject to Development Standards under Section 23E.64.070
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030-A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030-B
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.070.C
Hotels, Residential, including Single Room Occupancy (SRO)	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing		
Six or fewer persons	ZC	Changes of use from an existing dwelling unit
Seven or more persons	AUP	
New Construction	UP(PH)	
All other Residential Accessory Structures and Uses not listed	Per R-3 District	See Table 23D.36.030
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

MU-R

The “Residential and Related Uses” section of Berkeley Municipal Code Table 23E.84.030 is amended to read as follows:

23E.84.030 Uses Permitted

Residential and Related Uses		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050	AUP	Subject to making applicable findings in Section 23C.24.070
Additions, Major Residential	AUP	See Definition in Sub-title 23F . Subject to finding required under 23E.84.090.L ; see limitations on location in Section 23E.84.060.G
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care Centers	UP(PH)	Subject to the findings in Section 23E.84.090.H
Child Care; Family Day Care		
Small Family Day Care Homes of 8 or fewer children	ZC	
Large Family Day Care Homes of 9 to 14 children	AUP	Subject to the findings in Section 23E.84.090.H
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes (Changes of Use)	ZC	Subject to parking requirements; see Section 23E.84.080.B
Community Centers	UP(PH)	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Dwelling Units		See limitation on location in Section 23E.84.060.G . Subject to development standards of Section 23E.84.070 and parking requirements in Section 23E.84.080.B
1 – 4 Units	AUP	
5+ Units	UP(PH)	
Group Living Accommodations, subject to R-3 District Standards	UP(PH)	See limitations on location in Section 23E.84.060.G
Home Occupations		
Low Impact	ZC	If the requirements of Section Chapter 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH) AUP	Subject to the requirements of Section Chapter 23C.16.030.B
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Libraries	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under 23E.84.090.H
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	

DRAFT ZONING ORDINANCE AMENDMENTS TO REVISE HOME OCCUPATIONS

Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section 23E.84.090.H
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	23C.26 , 23D.08.010 , 23D.08.020 , 23D.08.050 , and 23D.08.060



[Commission Name]

INFORMATION CALENDAR

[Meeting Date (Month Day, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Chris Schildt, Chairperson, Planning Commission and Jeff Vincent,
Chairperson of the Workplan Subcommittee

Subject: Planning Commission Workplan 2018-2019

INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits its work plan for Fiscal Year 2018, pursuant to the Berkeley City Council's request.

CURRENT SITUATION AND ITS EFFECTS

Unlike other city commissions, the PC's workload is almost exclusively dictated by referrals from the City Council. Each year, the Council goes through an extensive referral ranking process, which shapes the prioritization of work for the PC. Thus, by design, the PC has far less latitude than other city commissions in setting its agenda. As of October 2018, the PC has a workload of more than 40 referrals from the City Council. Therefore, the PC has framed its workplan around these referrals, highlighting the strategic areas of PC interest/outcome that will be impacted by these efforts. The outline of PC's workplan is explained below:

Strategic Outcome Areas:

1. **Increase affordable housing.** This includes retaining and expanding the stock of affordable housing available throughout the city. The commission has identified three mechanisms by which we can advance this strategic outcome:
 1. Modify development standards to create more affordable housing;
 2. Revise administrative procedures and levels of discretion to streamline affordable housing;
 3. Develop community benefits and other value capture mechanisms in order to maximize affordability in new development.
2. **Promote healthy, livable communities.** This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all residents.

[Title of Report]

INFORMATION CALENDAR

3. **Support community economic development and commercial vitality.** This includes preserving and enhancing Berkeley's thriving neighborhood commercial areas and ensuring a vibrant downtown.
4. **Demonstrate state-wide leadership in equitable local land use policy.** This included complying with and/or exceeding state land use laws and demonstrating leadership on social equity, affordability, and climate resilience issues.

Resources: Significant staff time is required to conduct the research, write reports, and draft zoning language. In some cases, consultants are brought on board to assist staff.

Activities: For each referral, the PC's action requires staff time for substantive reports on each topic within each referral as well as developing draft zoning language changes. Often the draft zoning language goes through multiple revisions across multiple PC meetings.

Outputs: On nearly all referrals, the PC output consists of recommendations to the City Council.

BACKGROUND

City Council has requested that each commission provide a workplan that explains the mission and goals of each appointed body. The mission of the Planning Commission, as outlined in the City Charter, reads:

"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."

Members of the PC have discussed their goals and prioritized four strategic outcomes to guide their 2018-2019 work as described above: 1) Increase affordable housing; 2) Promote healthy, livable communities; 3) Support community economic development and commercial vitality; and 4) Demonstrate state-wide leadership in equitable land use policy.

The attached Planning Commission 2018-2019 Workplan (Excel sheet) shows prioritized referrals, referrals awaiting action both another commission, referrals ranked by City Council that are slated for PC action to begin after end of the 2018-2019 work planning period (ending June 2019) based on resources and capacity, and referrals not ranked by City Council for 2018-2019 work plan but will be added to PC work schedule once ranked based on ranking.

ENVIRONMENTAL SUSTAINABILITY

The PC's workplan aids in advancing the city's goals around sustainability and greenhouse gas reduction.

[Title of Report]

POSSIBLE FUTURE ACTION

The PC's pace in working through City Council referrals is determinant on staff support. Currently, the PC has 2 (with plans to hire a 3rd soon) FTE staff planners support the growing workload. The PC is understaffed relative to its workload created by the City Council and relative to other Commissions. The PC's ability to move more quickly through City Council referrals could be greatly improved by increasing staff support to the PC.

The PC also makes additions or changes to the workplan as expedited referrals and other timely requests arise from the City Council.

Resources Needed: Given the urgency of the housing situation in the City of Berkeley, additional staff support for the PC seems to be a prudent priority for city leaders to address.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Increasing staff support to the PC will likely incur expense to the City of Berkeley Planning Department.

CONTACT PERSON

Alene Pearson, Principal Planner, Land Use Planning Division, City of Berkeley, 510-981-7489

Attachments:

1: PC Workplan Excel doc 2018-2019

REFERRALS to Planning Commission by the City Council	RANKING* - RRV & HAP	STRATEGIC OUTCOME AREAS				
Referrals Prioritized by PC for 2018-2019 Workplan		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Small Business Package	started	x				
Moderate Impact Home Occupations	started			x		
Comprehensive Cannabis Ordinance	3 started referrals			x	x	
Density Bonus Package						
Develop Community Benefits with C-T development standards (see Student Housing Package)	started					
Create pilot program for in-lieu fees for City Density Bonus (see Student Housing Package)	56	x				
Revise General Plan & Zoning Ord. to add written standards including density standards for parcels	started					
Amend Zoning Ord. to increase max height by 20' and adjust FAR in area bounded by Bancroft, College, and Fulton (see Student Housing Package)	16					
Student Housing Package	16, 56, and two started referrals	x				
Adeline Community Benefits/Land Value Capture	10	x	x			
Streamline Permitting for Affordable Housing	started	x				JSISHL
Zoning Ordinance Revision Project Phase 1 & 2	started		x			
Green Affordable Housing	started	x				
Flexible Ground Floor Uses	25 and one started referral	x				
Housing Linkage Fees	started (short-term)	x				

Referrals Awaiting Action by Other Commission(s)		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Air Pollution Performance Standards from CEAC			x			CEAC
Green Stormwater Requirements			x			CEAC
Denial of Permits to Violators			x			HAC

Referrals ranked by City Council, work to begin after end of this work planning period (June 2019) TBD, based on resources and capacity		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Toxic Remediation Regulations	started		x		x	
Green development standards	started (by CEAC)		x			
Lower discretion for internal remodeling	14		x			
Expand boundaries of Downtown Arts District	17			x		
Junior ADUs	20	x				
San Pablo Ave Specific Area Plan	23		x			
ADUs in very high fire zones	43		x			
Health Equity and Innovation District	49		x			
Research Tiny Homes, YSA Tiny Homes	63	x				
Commercial Square Footage in C-E	59			x		

Referrals not ranked by City Council for 2018-2019 work plan; will be added to work schedule once ranked based on ranking.		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Demolition Ordinance		x				
ADUs for Homeless		x				
Fee Waivers for Housing Trust Fund Projects		x				
Auto Uses in C-SA				x		
ADA Improvements in ADUs			x			
Inclusionary Requirement for Live/Work		x				
Mini Dorms (student housing)		x				
ADU Mods			x			

* "started" is a referral on which substantive work began before last Council RRV, thus not subject to re-ranking. If blank, the referral has not yet been ranked by the City Council

DRAFT

2019 PLANNING COMMISSION MEETINGS

Item 12
 Planning Commission
 November 7, 2018

January						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
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29	30	31				

- PC Meetings
- Holidays
- VTO Days



Planning and Development Department
 Land Use Planning Division

STAFF REPORT

DATE: November 7, 2018
 TO: Members of the Planning Commission
 FROM: Alene Pearson, Principal Planner
 SUBJECT: Community Recreation Center Permit Threshold Clarification

BACKGROUND

At the October 3, 2018 meeting, Planning Commission held a Public Hearing to consider modifications to the Zoning Ordinance that support small businesses. One of the items discussed was level of discretion and permit thresholds for Commercial Recreation Centers (CRCs) in commercial districts. Planning Commission directed staff to apply C-DMU thresholds to Avenue Commercial districts. This solution linked higher levels of discretion to larger facility sizes and recognized similarities between the C-DMU and the Avenue Commercial districts. For Neighborhood Commercial districts, the Planning Commission asked for more discretion and oversight than provided by C-DMU regulations. After discussing various threshold sizes, Planning Commission requested AUPs be required for CRCs of all sizes in Neighborhood Commercial districts.

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

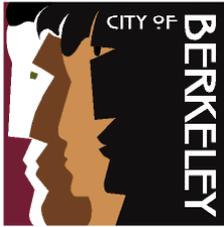
Once staff drafted these changes, it was apparent that this solution fell short of Planning Commission’s goals. Staff has recommended the following technical amendment to better reflect Planning Commission’s stated objectives:

Proposed Neighborhood Commercial Permit Thresholds for CRCs	
Size Threshold (square feet)	Permit Required
Under 3,000	ZC
3,000 – 5,000	AUP
Over 5,000	UP(PH)

These changes are being presented to City Council on November 27, 2018.

RECOMMENDATION

Review and endorse staff’s technical amendment.



Health Housing and
Community Services Department
Housing & Community Services Division

MEMORANDUM

To: Housing Advisory Commission, Planning Commission, Zoning
Adjustments Board, and Commission on Disability

From: Jenny Wyant, Community Development Project Coordinator

Date: October 22, 2018

Subject: 2018 Housing Trust Fund RFP: Applications Received

On August 16, 2018, the Housing and Community Services (HCS) Division released a Request for Proposals for its Housing Trust Fund program, which provides loans for the development of housing affordable to low income households. The City received two applications, described on the next page of this memo.

As required by the Housing Trust Fund Guidelines, HCS is providing the Commissions named above with a summary of the projects received. Complete copies of applications will be available for public review at the Downtown Library and at HCS offices at the address below.

A public hearing will be held on the applications received on November 1, 2018 in front of the Housing Advisory Commission (HAC), at 7:00 pm at the South Berkeley Senior Center at 2939 Ellis Street.

The HAC is expected to consider making funding recommendations for City Council at its January 2019 meeting.

A Vibrant and Healthy Berkeley for All

Summary of Applications Received

Project: **Alcatraz Apartments**

Sponsor: Satellite Affordable Housing Associates

Addresses: 1900 Alcatraz Avenue

Funds Requested: \$500,000

Activity Proposed: Renovation of an existing affordable housing property that includes 8 residential units and 1 commercial unit. Scope includes removing exterior dry rot, painting the exterior, assessing seismic needs, upgrading plumbing and heating systems, replacing appliances, and installing new flooring in residential units.

Target Population: Families

Project: **Stuart Street Apartments**

Sponsor: Bay Area Community Land Trust

Address: 1638 Stuart Street

Note: This application was submitted after the RFP deadline and the Housing Advisory Commission will decide whether to consider it.

Funds Requested: \$900,000

Activity Proposed: Full renovation of two buildings (containing a total of 8 residential units) that have been vacant for over 20 years. Scope includes removing and replacing the roof, interior demo, remediating lead and asbestos, installing new insulation and drywall, moving interior walls to reconfigure some units, replacing windows, and replacing the mechanical, electrical, and plumbing systems.

Target Population: Families