

Zoning Amendments to Support Small Business

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Planning Commission, June 7, 2023

Requested Actions Tonight



1. Receive a **presentation** on proposed zoning amendments to support Berkeley businesses;
2. Provide general **policy-level** feedback and direction;
3. Convene a **Subcommittee**, and determine its scope of work, to provide detailed review of draft zoning ordinance amendments

Background

Office of Economic Development (OED) Baseline Services



Identify resources and get assistance to launch or grow a business.



Connect with local leaders through business networks, commercial districts, and industry groups.



Obtain **economic and demographic data** to support location decisions, marketing, and research.



Find a **business location** or commercial real estate in Berkeley.



Get certified as a **green business**.



Get financing for a business expansion or other business needs through our Revolving Loan Fund.



Recruit local talent or share your knowledge through our education and training partner network.



Plug-in to the broader Berkeley innovation ecosystem, including U.C. Berkeley and Berkeley Lab.



Navigate Berkeley's codes, regulations, and policies to start or expand a business.



Provide feedback on local policy.

Background

Office of Economic Development (OED) Baseline Services

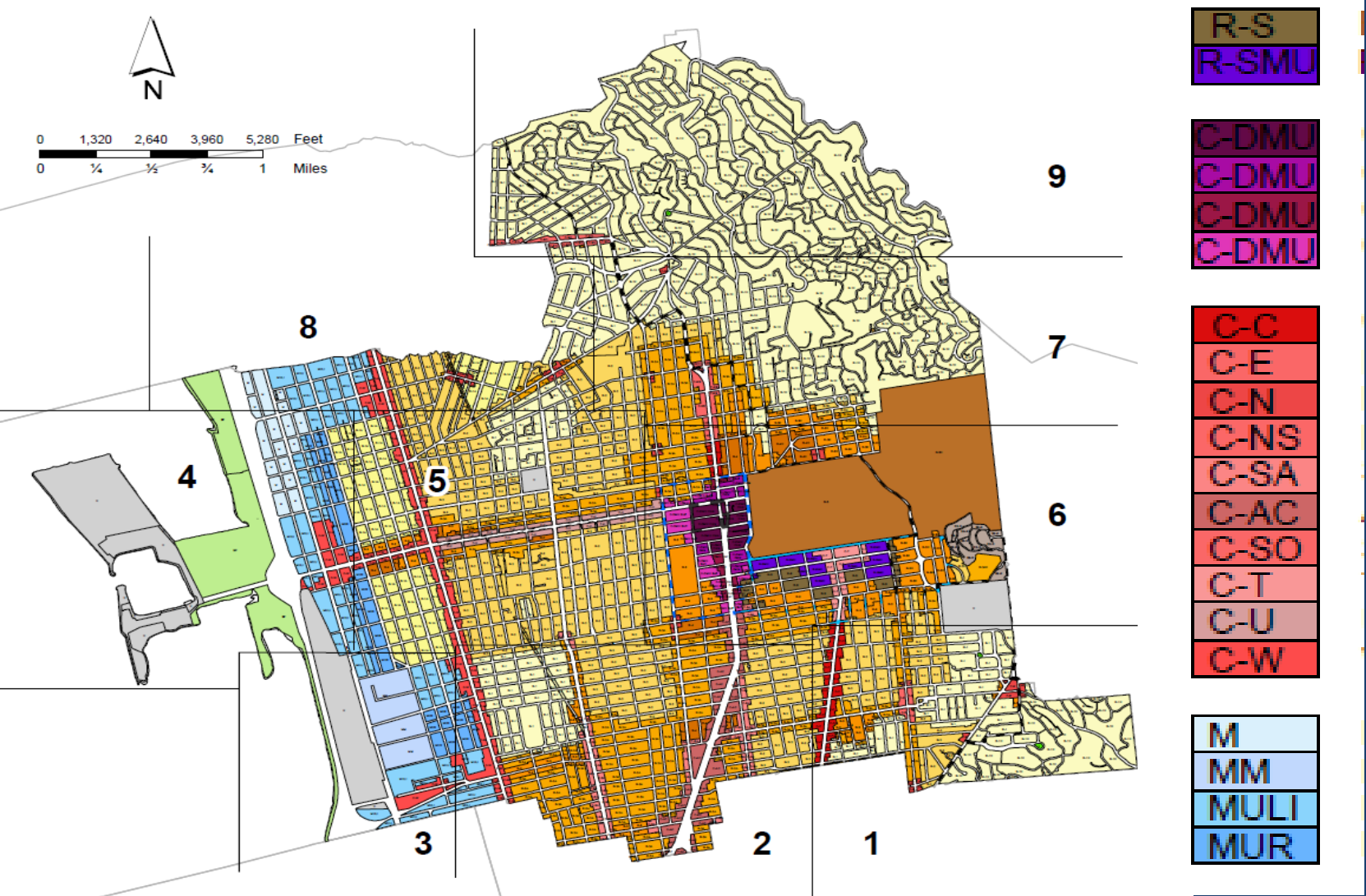


Navigate Berkeley's codes,
regulations, and policies to start
or expand a business.

OED provides assistance to clients navigating the city's permitting and licensing processes

- Zoning Review
- Building Permit Review
- Other Special Permits (i.e. Parklets)
- Business Licenses
- Accessing information
- Engaging with the City - knowing "Who to Call"
(in addition to 3-1-1)
- Brainstorming and thought partnership
- City policy interpretation

Zoning Map & Key to Acronyms



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

Background

Zoning Amendments to Support Small Businesses



2017 Small Business Support Package (Ranked #1 Referral*)

2018 Zoning Amendments to Support Small Business Adopted (#BeBold)

2019 Referral: Modifications to the Zoning Ordinance to Support Small Business - (9 more rec's)

2020 Planning Commission Discussion (#BeBold 2)

2021 Staff identifies additional areas of the BMC that impact the establishment and expansion of small local businesses and non-profits (#8-14)

2022 Two #BeBold2 items, related to Arcades and Signs are adopted by City Council

The referred items range in scope from broad suggestions to targeted requests but share the common goal of expediting service expansion for existing businesses and reducing barriers to entry for new and expanding Berkeley businesses.

- There are seven remaining actions from the 2019 referral (#1-7)
- There are seven more for consideration (#8-14)

Reviewed @ Planning Commission 7/2020



Zoning Amendments 2019 Council Referral (Recommendations #1-7)

Remaining Council Referred Recommendations

Reviewed by Planning Commission, July 2020



1. Permit Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise, and Art Classes) with a Zoning Certificate (ZC) in commercial districts. Currently most commercial districts require an AUP for group instruction.

Staff proposes to regulate Group Instruction, Dance & Art Classes, and Martial Arts consistently with a ZC in districts where these uses are permitted.



Remaining Council Referred Recommendations

Rec 1. Planning Commission Reviewed in 2020



Group Instruction Regulations in the BMC –Existing

District	Permit Required Based on Group Instruction
All Commercial Districts, except C-N, C-E and C-NS [1]	ZC
C-N, C-E and C-NS	AUP

[1] Change of use for floor area over 3,000 sq ft requires and AUP in C-C, C-U and C-SA

Remaining Council Referred Recommendations

Rec 1. Planning Commission Reviewed in 2020



Proposed Regulations For Group Instruction

District	Permit Required Based on Group Instruction
All Commercial Districts ("C" prefixed zones)	ZC

Staff proposes to update the definitions of "Dance", "Exercise", "Martial Arts" and "Art Classes" for consistency, and to permit the Group Instruction of Dance, Exercise, Art Classes, and Martial Arts identically

Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



2. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards - Currently an operator of a Food Service Establishment must obtain a Use Permit with a Public Hearing UP(PH) to serve Distilled Spirits.

An AUP provides:

- *Public notice*
- *Ability to appeal*
- *Staff may apply reasonable conditions of approval*



Remaining Council Referred Recommendations

Rec. 2 Planning Commission Reviewed in 2020



Regulations in the BMC - Existing

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
All Commercial Districts, except C-AC and the R-BMU District	ZC, with performance standards	UP (PH)
R-BMU	UP(PH)	UP(PH)
C-AC	AUP	UP(PH)
MU-LI, MU-R	UP(PH)	UP(PH)

Remaining Council Referred Recommendations

Rec. 2 Planning Commission Reviewed in 2020



Proposed Regulations

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service Proposed Changes in Green	
	Beer and Wine	Distilled Spirits
R-SMU	ZC, with Performance Standards	UP(PH)
All Commercial Districts, except R-BMU District	ZC, with Performance Standards	AUP, with Performance Standards
R-BMU	ZC	UP(PH)
MU-LI, MU-R	AUP	AUP

Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



3. Permit stand-alone Beer and Wine Sales and Service (such as Tap Rooms and Wine Bars) with an Administrative Use Permit (AUP) subject to performance standards - Currently, tap rooms, wine bars, and tasting rooms are subject to a UP(PH) process in many commercial districts.

An AUP provides:

- *Public notice*
- *Ability to appeal*
- *Staff may apply reasonable conditions of approval*



Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



4. Update the Special Use Standards in BMC Section 23E.16.040 for Alcoholic Beverage Sales – Based on the recommendations presented above related to Alcohol Beverage Sales, the Special Use Standards section must be updated correspondingly.

Staff provided updated language consistent with best practices in Alcoholic Beverage sales regulations.

Including findings for public convenience and necessity that provide additional objective standards for staff to evaluate when developing findings for a proposed permit.

Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



5. Modify the limitation on hours of operation in commercial districts –

Currently, the permitted hours of operation vary by hours and days and may be different in adjacent commercial districts.

The existing regulations have different times during the weekdays which does not account for holidays, and other unique cultural and civic events that may occur during a weekday.

Existing regulations aren't flexible



Remaining Council Referred Recommendations

Rec. 5 Planning Commission Reviewed in 2020



Existing Allowed Hours of Operation & Permit Required to Extend Hours

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U	7:00 a.m. – 12:00 midnight	AUP
C-N, C-E, C-NS, C-SO, C-W outside nodes	7:00 a.m. – 11:00 p.m.	UP
C-W nodes	6:00 a.m. – 12:00 midnight with Zoning Certificate	UP
C-SA	7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 12:00 Fridays and Saturday	UP
C-AC	7:00 a.m. – 12:00 midnight Sundays through Thursdays 7:00 a.m. – 2:00 a.m. Fridays and Saturday	UP
C-T between Bancroft Way and the north side of Dwight Way	24 hours per day 7 days a week	N/A
C-T between the south side of Dwight Way and Parker Street	7:00 a.m. – 12:00 midnight	AUP
C-DMU	6:00 a.m. and 2:00 a.m.	AUP
MU-R	6:00 a.m. and 10:00 p.m.	AUP

Remaining Council Referred Recommendations

Rec. 5 Planning Commission Reviewed in 2020



Proposed Allowed Hours of Operation & Proposed Permit Required to Extend Hours

District	Allowed Hours of Operation
C-C, C-U, C-NS, C- AC, C-W Nodes	6:00 a.m. - 2:00 a.m.
C-N, C-E, C-SA, C-SO, C-W outside nodes	6:00 a.m. - 12:00 midnight
C-T, C-DMU	24 hours per day 7 days a week
MU-R	6:00 a.m. - 12:00 midnight

An AUP would be required to extend hours beyond the time limits except in C-T and C-DMU

Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



6. Remove the 'change of use' requirements in commercial districts –

The definition of Change of Use is: a commercial change of use includes a change to a different category of commercial or manufacturing use, but does not include changes between uses that are classified in the same category of commercial or manufacturing use.

Permit's staff to evaluate each use based on its compatibility with purpose of the zoning district and any potential impacts and unique characteristics that may require conditions of approval.



Commercial space with "For Lease" signs and an AUP application pending

Remaining Council Referred Recommendations

Planning Commission Reviewed in 2020



7. Consider the appropriate levels of discretion for Automatic Teller Machines (ATMs) in commercial districts – Currently the BMC requires a UP(PH) for an ATM associated with a Financial Institution.

*Staff proposes **no change** to the existing regulations for ATMs based on the evolving nature of payment transactions and the volatility of the banking industry.*

Businesses and Planning Commissioners did not identify this as a priority change.



Additional Staff Recommendations Developed 2020-2023 (#8-14)

OED Small Business Forum
Kirin Restaurant, 1767 Solano Ave.
November 18, 2019



Additional Staff Recommendations

8. Amend the level of discretion for Office, Business and Professional, Art/Craft Studios, and Pet Stores – Currently uses such as Office, Business and Professional, and Art/Craft Studios require an AUP in some commercial districts and a ZC in others. Pet Stores currently require a UP(PH) in all but one commercial district.

*Staff proposes to reduce the level of discretion to a **ZC** for Office, Business and Professional, and Art/Craft Studio uses in all commercial districts.*

*Staff proposes to reduce the level of discretion to an **AUP** for Pet Stores in commercial districts.*



Additional Staff Recommendations

9. Amend the level of discretion for Live Entertainment – Currently Live Entertainment requires an AUP in some commercial districts and a UP(PH) in other districts.

Staff proposes that the appropriate level for this proposed use is an AUP if amplified and a ZC if unamplified.

Live Entertainment is defined as: “any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.”



Additional Staff Recommendations

Rec. 9 Seeking Feedback



Live Entertainment Existing Regulations

District	Permit Required for Live Entertainment	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C- DMU, C-AC	AUP	ZC
C-N, C-NS, C-W	UP(PH)	ZC
C-E	Not Permitted	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	UP(PH)	UP(PH)

Additional Staff Recommendations

Rec. 9 Seeking Feedback



Live Entertainment Proposed changes in Green

District	Permit Required for Live Entertainment	
	AMPLIFIED	UNAMPLIFIED
C-C, C-U, C-SA, C-T, C-SO, C- DMU, C-AC, C-N, C-NS, C-W, C-E	AUP	ZC
M, MM	Not Permitted	Not Permitted
MU-LI, MU-R	AUP	ZC

**All existing noise regulations and performance standards in the BMC continue to apply to Live Entertainment uses*

Additional Staff Recommendations



10. Amend the requirement for seated food service for distilled alcohol beverage service in the C-T, C-SO, and C-NS districts – Currently only four districts (C-T, C-SO, C-NS and R-BMU) in the City require food service to accompany distilled alcohol beverage service.

Staff proposes to remove this requirement and regulate this use consistent with other commercial districts. The current requirement forces entrepreneurs and business operators to include food service whether it's part of business plan, expertise or financial capabilities.



A Tripadvisor reviewer
on Facebook



Reviewed November 28, 2007

Great music. Went here for new years. The food was mediocre

Great music. Went here for new years. The food was mediocre

Helpful?



This review is the subjective opinion of an individual contributor and not of Tripadvisor LLC. Tripadvisor performs checks on reviews.

Additional Staff Recommendations

11. Amend the level of discretion for Food Service Establishments and remove the restriction on renting restaurant space to a third party – Currently the BMC does not allow a restaurant space to be rented to a third party.

Staff proposes to permit food establishments 3,000 sq ft or less with a ZC, and remove the restriction on renting a food establishment space to a third party.

Table C.A (next 3 slides) provides the existing regulations for Food Service Establishments.



Additional Staff Recommendations

Rec. 11 *Seeking Feedback*



Table C.A – Food Establishment Permit Requirements (Existing, page 1 of 3)

District/Use Size	Permit Required
C-C, C-U, C-T, C-W	
Under 3,000 sq. ft	ZC
Over 3,000 sq. ft.	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
R-BMU, Ashby BART Station C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP

Additional Staff Recommendations

Rec. 11 Seeking Feedback



Table C.A – Food Establishment Permit Requirements (Existing, page 2 of 3)

District/Use Size	Permit Required
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
R-BMU, North Berkeley BART Station	UP(PH)
C-E	AUP[1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP[2]

Additional Staff Recommendations

Rec. 11 Seeking Feedback



Table C.A – Food Establishment Permit Requirements (Proposed in Green)

District/Use Size	Permit Required
All commercial (C-Prefixed) districts and R-SMU	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
R-BMU, North Berkeley BART Station	UP (PH)



Additional Staff Recommendations



12. Remove the Quota on Food Service Establishments in the C-E district –
Currently the C-E (Commerical- Elmwood) district is the only district in the City that restricts the number of Food Service Establishments to 25 (total).

Staff proposes to remove this restriction.



Additional Staff Recommendations

13. Amend the requirements for Food Service Establishments in select M districts - Currently the BMC permits Food Service Establishments in the M, MM, M-UR and MU-LI districts with an AUP or an UP(PH) based on district and square footage.

*Staff proposes that the appropriate level of discretionary review for this use is an **AUP**. Staff recommends to remove the prohibition on outdoor food service in the M, MM, MU-LI, the M-UR districts.*

An AUP provides:

- Public notice*
- Ability to appeal*
- Staff may apply reasonable conditions of approval*



Standard Fare owner Kelsie Kerr has invested in a covered dining area for her take-out eatery. Credit: Kelly Sullivan

Additional Staff Recommendations

Rec. 13 Seeking Feedback



Permit Requirements for Food Establishments in Manufacturing (M) Districts – Existing

Use and Type	M	MM	MU-LI	MU-R
Incidental Use				
Under 20,000 sq. Ft.	AUP [1]	AUP [1], [2]	AUP [1]	AUP [1]
20,000 sq. ft. or more				AUP
Primary Use				
Carryout Food Service (Primary Use)				
Under 5,000 sq. Ft.			AUP	AUP
5,000 sq. ft. or more			UP (PH)	UP (PH)
Quick Service Restaurant (Primary Use)				
Under 5,000 sq. Ft.			AUP	AUP
5,000 sq. ft. or more			UP (PH)	UP (PH)
Full Service Restaurant (Primary Use)			UP (PH)	UP (PH)

Notes:

[1] Outdoor food service is not permitted. [2] Limited to food or beverage for immediate consumption.

Additional Staff Recommendations

Rec. 13 Seeking Feedback



Permit Requirements for Food Establishments in Manufacturing (M) Districts – Proposed, Changes in Green

Use Type and Size	District			
	M	MM	MU-LI	MU-R
Incidental Use				
Under 20,00 sq. Ft.	AUP	AUP	AUP	AUP
20,000 sq. ft .or more				AUP
Food Service - Primary Use				
Under 5,000 sq. ft.			AUP	AUP
5,000 sq. Ft. Or more			UP (PH)	UP(PH)
<i>*Notes [1] and [2] are removed.</i>				

With the removal of Notes [1] and [2] - incidental outdoor food service is permitted under 20K sq ft with an AUP in all M Districts, (M, MM, MU-LI, and MU-R) and food or beverage is no longer limited to immediate consumption under 20K sq ft with an AUP in the MM District.

Additional Staff Recommendations

Rec. 14 *Seeking Feedback*



14. Amend the restriction of Drug Paraphernalia Stores in the C-T district – Currently the BMC does not permit Drug Paraphernalia Stores or sales in the C-T (Commerical Telegraph) district.

Staff proposes to remove the 'allowed use restriction' in the C-T district.



Zoning Amendments to Support Small Businesses

Recommendations Referred by Council in 2019, Reviewed by the Planning Commission 2020



1. Permit Dance Studios, Yoga Studios, Martial Arts, Gyms & Health Clubs with a ZC.
2. Permit the sale of Distilled Spirits that are incidental to a Food Service Establishment with an AUP.
3. Permit stand-alone Beer and Wine Sales and Service with an AUP.
4. Update the Special Use Standards in *BMC Section 23E.16.040 for Alcoholic Beverage Sales*.
5. Modify allowed hours and days of operations in commercial districts.
6. Eliminate 'change of use' requirements in commercial districts.
7. *Permit Automatic Teller Machines (ATMs) in commercial districts with a Zoning Certificate (ZC). [No Change Proposed]*

Zoning Amendments to Support Small Businesses

Recommendations Developed 2020-2023



8. Permit Office, Business & Professional uses, Art/Craft Studios, with a ZC. Pet Stores with an AUP in C-prefixed districts.
9. Permit amplified Live Entertainment with an AUP, and unamplified Live Entertainment with a ZC in all C-prefixed districts.
10. Remove the requirement for seated food service to accompany distilled alcohol beverage service in the C-T, C-NS, and C-SO districts.
11. Permit Food and Beverage Service with a ZC (3,000 sq ft and below) and remove the restriction on renting restaurant space to a third party.
12. Remove the Quota for Food Service Establishments in the C-E district.
13. Permit incidental outdoor Food Service Establishments in M, MM, MU-LI, and MU-R with an AUP (>20,000 sq ft).
14. Remove the restriction on Drug Paraphernalia Stores and sales in the C-T district.

Summary of Outreach and Engagement (to date)

- 1:1 Meetings with Councilmembers & Mayor (weeks of 3/13 and 3/20 and 4/10/23)
- Meetings with BPD, Code Enforcement, and Health Department (4/10/23 & 5/1/23 and 6/1/23)
- Commercial District Leaders - Berkeley Business District Network (BBDN) (3/16/23)
- Public Community meeting hosted by the Berkeley Chamber focused on supporting Food Establishments and the Nightlife Sector (4/18/23)
- Elmwood Business Association (4/21/23)
- Telegraph Business Improvement District (5/9/23)
- Berkeley Neighborhoods Council (5/13/23)
- Downtown Berkeley Association (5/25/23)

Questions for Consideration & Discussion



1. Are there any issues in the Zoning Ordinance related to supporting small business or cultural activities that we overlooked?
2. Are there any potential negative impacts that staff has not considered or addressed? (esp. recommendations #8-14)

Next Steps

- ✓ *Convene a Subcommittee, and determine its scope of work, to provide detailed review of proposed zoning ordinance amendments*



Requested Actions Tonight



1. Receive a **presentation** on proposed zoning amendments to support Berkeley businesses;
2. Provide general **policy-level** feedback and direction;
3. Convene a **Subcommittee**, and determine its scope of work, to provide detailed review of draft zoning ordinance amendments