



Office of the City Manager

CONSENT CALENDAR  
March 19, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development

Subject: Zoning Amendments to Allow Later Hours of Operation on Telegraph Avenue;  
BMC Section 23E.56.060

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 23E.56.060 of the Zoning Ordinance to extend the allowable hours of operation for businesses in the Commercial Telegraph (C-T) District to include 24/7 hours north of Dwight Way and a required closing time of 12:00 a.m. south of Dwight Way.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments will allow later operations, which may result in increased sales activities and additional sales tax revenues.

CURRENT SITUATION AND ITS EFFECTS

On November 28, 2012 the Planning Commission recommended the City Council adopt zoning amendments to allow hours of operation for existing and new businesses in the C-T District as follows (see Attachment 1):

- 24 hours per day north of Dwight Way with a “sunset clause” that changes the allowable hours to 7:00 a.m. to 2:00 a.m. in five years;
- 7:00 am to 12:00 a.m. south of Dwight Way;
- No sales of alcohol for off-site consumption after midnight throughout the district.

Public comment at the November 28 public hearing focused on the sunset clause and did not include opposition to the later hours of operation. Members of the Telegraph Avenue Business Improvement District (TBID) indicated a preference for no sunset clause because it could be a deterrent to new businesses coming to the area due to the lack of certainty about allowable hours in the future. The Commission discussed the approach of regularly extending the sunset clause close to the sunset date so long as there are no issues associated with the late night operations.

Commissioners also expressed concern about the impact of noise generated by late night activities on residents located north of Dwight Way and recommended a closing time of 12:00 a.m. instead of 2:00 a.m.

## BACKGROUND

In May 2010, the City Council referred to the Planning Commission a proposal to extend hours of operation on Telegraph Avenue until 3:00 am. At Commission meetings, the Telegraph Business Improvement District (TBID) proposed a “24/7 zone” instead. The Planning Commission asked staff to prepare language that would allow 24/7 operations with the ability to modify the hours if a business was problematic. As discussed in the July 25, 2012, staff report (Attachment 2), there are two ways the City can reduce allowable hours of operation after they are granted: the existing nuisance and abatement process for specific businesses, or including a “sunset clause” specifying an end date in the ordinance granting the later hours that affects all businesses. The Commission opted to include the sunset clause.

### *Feedback from other Departments*

The Police Department and the Code Enforcement Division are concerned that later hours of operation could result in increased negative behavior on Telegraph Avenue and increased calls for police service, which could reduce police availability for other calls.

### *Public Notice*

A public hearing notice was published in the Berkeley Voice and Daily Californian. In addition, the notice was emailed to interested persons from the Southside Plan and Bus Rapid Transit projects and to Neighborhood Group representatives.

### *Current Hours*

Current regulation of hours and alcohol sales or service in the entire C-T District (no difference north/south of Dwight Way) are as follows:

- Businesses without alcohol sales or service can stay open until midnight Sunday-Thursday and 2:00 a.m. on weekends and can pursue an Administrative Use Permit (AUP) to extend those hours;
- Businesses with alcohol sales or service can stay open until 10:00 p.m. weekdays and midnight on weekends and can pursue a Use Permit with Public Hearing (UPPH) to extend those hours;
- Service of distilled spirits is only allowed at full-service restaurants (note, no change proposed to this provision).

## RATIONALE FOR RECOMMENDATION

Later hours of operation on Telegraph Avenue will increase late night options available to area residents and encourage more people to be out in the district at night. This may attract new businesses or allow existing businesses to expand their service. A sunset clause is included as a precaution in case the change results in undesirable behavior associated with the later hours. The 12:00 a.m. closing time south of Dwight Way was included due to concern about noise impacts on the adjacent residential area.

### ALTERNATIVE ACTIONS CONSIDERED

The Planning Commission considered a range of options, including:

- 3 a.m. closing time instead of 24 hour operations north of Dwight Way
- No changes to the existing zoning ordinance, continuing to require a discretionary permit to extend hours
- No sunset clause for the 24 hour operations north of Dwight Way
- 2 a.m. closing time south of Dwight Way

### CONTACT PERSON

Eric Angstadt, Director, Planning Department, 981-7410

#### Attachments:

- 1: Ordinance (Track change and clean text versions)
- 2: Map of the C-T District
- 3: Planning Commission Staff Reports (in reverse order: November 28, 2012; July 25, 2012; May 16, 2012; May 4, 2011; and March 3, 2011)
- 4: Planning Commission Minutes
- 5: Communications

## ORDINANCE NO. -N.S.

## AMENDING BERKELEY MUNICIPAL CODE SECTION 23E.56.060; CHANGES TO ALLOWABLE HOURS OF OPERATION IN THE COMMERCIAL TELEGRAPH (C-T) ZONING DISTRICT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23E.56.060 is amended to read as follows:

- ~~A. Notwithstanding the provisions of Chapter 23B.56 related to extending the hours of operation of an existing commercial use subject to a Use Permit or AUP, commercial uses that do not involve alcoholic beverage sales or service may operate from 7:00 a.m. to midnight Sunday through Thursday, and 7:00 a.m. to 2:00 a.m. Friday and Saturday. The Zoning Officer may approve an Administrative Use Permit for longer hours in accordance with Section 23E.16.010 if he or she makes the finding set forth in Section 23E.56.090.C.~~
- ~~B. Notwithstanding the provisions of Chapter 23B.56 and Section 23E.16.040 related to extending the hours of operation of an existing commercial use subject to a Use Permit or AUP, commercial uses involving alcoholic beverage sales or service may operate starting at 7:00 a.m. and may not operate after 10:00 p.m. Sunday through Thursday, or midnight Friday and Saturday, unless different hours are specified by a Use Permit in accordance with Sections 23E.16.010 and 23E.16.040. In order to grant such Permit, the Board must make the findings set forth in Section 23E.56.090.C.~~
- A. Notwithstanding the provisions related to extending the hours of operation of an existing commercial use subject to a Use Permit or AUP in Chapter 23B.56, Section 23E.16.040, and/or any Conditions of Approval in a Permit, commercial uses between Bancroft Way and the north side of Dwight Way may operate 24 hours per day, seven days per week, provided that any use with alcohol sales or service shall conform with subdivision B of this Section.
1. After 2:00 a.m. on January 1, 2018 the allowable operating hours north of Dwight Way shall be from 7:00 a.m. to 2:00 a.m. seven days per week, unless later hours are specified by a Use Permit under Section 23E.56.090.C.
  2. Commercial uses located between the south side of Dwight Way and Parker Street may operate from 7:00 a.m. to 12:00 a.m. seven days per week, unless later hours are specified by a Use Permit under Section 23E.56.090.C.
- B. An establishment that sells alcohol for offsite consumption may not stay open past midnight unless its ABC license requires sales of alcohol to cease by midnight, provided that the ZAB may approve a Use Permit to stay open later if the ABC

license does not contain such a condition, if it makes the findings in Section 23E.56.090.C.

C. On-premise service and consumption of distilled alcoholic beverages shall be permitted in full service restaurants only.

CD. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading under Section 23E.56.030, except as below:

1. All food service uses shall be subject to the limitations of Section 23E.56.040 and none shall be considered as an Incidental Use for this District.

DE. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.56.030.

EF. Adult-oriented Businesses and Amusement Arcades are prohibited. ~~Alcoholic Beverage Sales and~~

G. Live/Work Uses are subject to additional ~~Ordinance~~ requirements under ~~Section 23E.16.040~~, Chapter 23E.20, ~~and the following requirements:~~

- ~~1. On-premise service and consumption of distilled alcoholic beverages shall be permitted only in full service restaurants.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## ORDINANCE NO. -N.S.

## AMENDING BERKELEY MUNICIPAL CODE SECTION 23E.56.060; CHANGES TO ALLOWABLE HOURS OF OPERATION IN THE COMMERCIAL TELEGRAPH (C-T) ZONING DISTRICT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23E.56.060 is amended to read as follows:

- A. Notwithstanding the provisions related to extending the hours of operation of an existing commercial use subject to a Use Permit or AUP in Chapter 23B.56, Section 23E.16.040, and/or any Conditions of Approval in a Permit, commercial uses between Bancroft Way and the north side of Dwight Way may operate 24 hours per day, seven days per week, provided that any use with alcohol sales or service shall conform with subdivision B of this Section.
1. After 2:00 a.m. on January 1, 2018 the allowable operating hours north of Dwight Way shall be from 7:00 a.m. to 2:00 a.m. seven days per week, unless later hours are specified by a Use Permit under Section 23E.56.090.C.
  2. Commercial uses located between the south side of Dwight Way and Parker Street may operate from 7:00 a.m. to 12:00 a.m. seven days per week, unless later hours are specified by a Use Permit under Section 23E.56.090.C.
- B. An establishment that sells alcohol for offsite consumption may not stay open past midnight unless its ABC license requires sales of alcohol to cease by midnight, provided that the ZAB may approve a Use Permit to stay open later if the ABC license does not contain such a condition, if it makes the findings in Section 23E.56.090.C.
- C. On-premise service and consumption of distilled alcoholic beverages shall be permitted in full service restaurants only.
- D. Any use which is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading under Section 23E.56.030, except as below:
1. All food service uses shall be subject to the limitations of Section 23E.56.040 and none shall be considered as an Incidental Use for this District.
- E. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading in Table 23E.56.030.

F. Adult-oriented Businesses and Amusement Arcades are prohibited.

G. Live/Work Uses are subject to additional requirements under Chapter 23E.20

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.