Berkeley City Council

CONSENT CALENDAR
November 12, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín, Laurie Capitelli and Susan Wengraf

Subject: Zoning Amendments to Encourage New Businesses and Promote Economic Development Downtown and Citywide

RECOMMENDATION:
Refer to the City Manager and Planning Commission to consider the following zoning amendments and make a recommendation back to City Council:

1. Amend BMC Section 23E.68.030 (Commercial Downtown Mixed Use District, C-DMU) as follows:

Full Service Restaurants with ZC 2,000 sq. ft. > 4,000 sq. ft.
Increase the threshold for approving Full Service Restaurant uses in the Commercial Downtown Mixed Use District (C-DMU) with a Zoning Certificate from 2,000 square feet to 4,000 square feet.

Department Stores with ZC up to 10,000 sq. ft.
Increase the threshold for approving Department Store uses in the Commercial Downtown Mixed Use District (C-DMU) from 7,500 sq. ft. with a Zoning Certificate to 10,000 sq. ft. with a Zoning Certificate.

2. Develop a new use category and definition for museums and allow museums in the C-DMU either with an AUP or ZC.

3. Request that the City Manager report on the status of Phase 2 zoning amendments to promote economic development.

On December 7, 2010 the Berkeley City Council adopted "Encouraging Economic Development and Increasing City Revenue from Business Activity" which referred to staff and the Planning Commission zoning amendments regarding changing use limitations, parking requirements and reducing levels of discretion to encourage new businesses to open up. http://cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2010/12Dec/2010-12-07_Item_23_Encouraging_Economic_Development_and_Increasing_City_Revenue.pdf

Martin Luther King Jr. Civic Center Building ● 2180 Milvia Street, 5th Floor, Berkeley, CA 94704 ● Tel: (510) 981-7140
Fax: (510) 981-7144 ● TDD: (510) 981-6903 ● E-Mail: jarreguin@cityofberkeley.info ● Web: www.jessearreguin.com

BACKGROUND:

On October 15, 2013 the City Council considered a proposal, "Expedited Permit Processing for Targeted Retail Segments". The proposal recommended that Council refer to the Planning Commission zoning changes citywide to expedite the permitting process for certain retail segments, in order to attract new diverse retail businesses and promote economic development. After City Council discussion the item was continued to the October 29, 2013 meeting.

One of the concerns raised by councilmembers about the proposal was that lowering levels of discretion and allowing large scale businesses in some neighborhood commercial districts may be controversial and that it was more appropriate to focus these changes in the Downtown district. A review of the uses allowed in the Commercial Downtown Mixed-Use District (C-DMU) showed that many of the retail segments would already be permitted with a Zoning Certificate in the Downtown so there was no need for the proposal and therefore the item was removed from the agenda on October 29, 2013 in order for this proposal to be introduced.

The Downtown Berkeley Association is currently working on a retail attraction strategy. Lowering levels of discretion for certain uses, that result in less time and cost in getting permits, will further those efforts in attracting new businesses Downtown and filling vacant commercial spaces.

A review of the C-DMU regulations show that there is currently no Museum use category in the zoning ordinance, which makes approving new museums Downtown more complex, and does not further the goal of making Downtown an arts and culture destination. Additionally, larger full service restaurants and anchor department stores would have to go through a costlier and more time consuming permitting process. These amendments seek to streamline the permitting process Downtown for large restaurants and department stores that could potentially be anchor businesses.

Also on December 7, 2010 the Berkeley City Council voted to refer zoning amendments to promote economic development to the City Manager and Planning Commission. Planning staff decided to break up the list of zoning changes into two phases. Phase 1 were less controversial changes and Phase 2 were more controversial changes that required more review and community input. Council adopted the Phase 1 changes in June of 2011. Phase 2 changes have since been stalled at the Planning Commission level due to a lengthy work plan.

FINANCIAL IMPLICATIONS:

Staff time involved in analyzing zoning amendments, posting notices for public hearing, and preparing reports and zoning language for Planning Commission and City Council review. However, these zoning amendments will most likely generate new business activity and result in additional planning permit fees and business license tax revenue, and promote economic revitalization in the Downtown area consistent with the Downtown Area Plan and the city's goals.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

ATTACHMENTS:

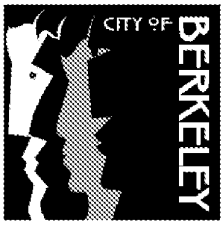
1. December 7, 2010 Council Item, “Encouraging Economic Development”
2. “Zoning Changes to Encourage Economic Development,” City Manager’s Office. Information Report to City Council, March 8, 2011.
3. B.M.C Section 23E.68.030, Uses Permitted in the Commercial Downtown Mixed-Use District (C-DMU)

Attachment Not Received

Attachment 1 to this report has not been received from the submitting department.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley, City Council's Web site
http://www.cityofberkeley.info/citycouncil/



Office of the City Manager

INFORMATION CALENDAR
March 8, 2011

To: Honorable Mayor and Members of the City Council

From: Phil Kamlarz, City Manager

Submitted by: Daniel Marks, Director of Community Development and
Michael J. Caplan, Economic Development Manager

Subject: Zoning Changes to Encourage Economic Development

INTRODUCTION

This report provides staff's responses to two Council referrals in regard to amending the zoning ordinance in order to increase sales tax revenue or improve the business climate in Berkeley. In the near term, staff proposes to proceed with non-controversial amendments (indicated below).

Staff has also suggested other possible amendments that we do not propose moving forward with at this time. These are presented in response to the Council's request that we consider a full range of possible approaches to improving business climate and increasing revenue, but are not proposed for implementation due to the high level of expected staff effort required to implement or because they may not have as significant impacts on business climate and increased sales tax revenue.

CURRENT SITUATION AND ITS EFFECTS

On October 26, 2010, the Office of Economic Development (OED) staff made a presentation to the City Council that highlighted the reduction in the City's sales tax revenues over the past few years. The presentation generated a verbal request from the Council for staff to consider possible zoning ordinance amendments to increase economic activity and sales tax revenues for the City.

On December 7, 2010, the Council approved a second referral to the Planning Commission that included specific zoning amendments to improve the business climate in Berkeley, with a focus on the North Solano Business District. The referral as adopted *(Encouraging Economic Development and Increasing City Revenue from Business Activity)* identifies numerous actions for the Planning Commission to consider (see Attachment 2.)

In response to both of these Council referrals, staff has developed a list of potential zoning amendments that might increase sales tax revenue or remove regulatory barriers to businesses, thereby improving the overall economic climate in Berkeley's

commercial districts (Attachment 1). This list consolidates Staff responses to both referrals.

BACKGROUND

Staff seeks to provide the Council with a full range of potential zoning amendments to improve the business climate and increase sales tax revenue. These options range from very simple changes with expected broad acceptance (e.g., reducing levels of discretion) to very complex and highly controversial changes (e.g., rezoning parts of MULI to Commercial.) Also in response to Council requests, staff has indicated the expected level of staff effort to implement the change, and the expected impact on the business climate and/or revenue.

These analyses reflect staff's current knowledge of the complexity of the change within the zoning ordinance, of the time required for a public process, and of staff's general knowledge of the impact on the Berkeley business climate. Staff has not conducted a full analysis of these issues, but simply shares with Council members our current perceptions of these changes.

The table in Attachment 1 provides the following information for each potential amendment:

- Priority Groupings (1, 2, or 3): These groupings reflect the level of effort and expected economic impact. Group 1 includes those requiring less staff effort and generating medium to high business impacts. Group 2 items are somewhat more complex, and Group 3 options are expected to require the most staff effort.
- Focus: Indicates whether the change would primarily affect existing or new businesses.
- Actions: A brief description of the proposed zoning change. Items from the December 7, 2010 referral are indicated in **bold.**
- Level of staff effort (Low, Medium, or High): The expected level of effort by Land Use staff to process the change. Level of effort reflects the technical complexity in writing the change, the extent of environmental review, and time needed for the public process.
- Economic Impact (Low, Medium, or High): The expected impacts on the City's business activity, based on OED staff's current knowledge of Berkeley businesses.

With exception of the specific amendments in the December 7, 2010 referral, staff is not recommending that the Council pursue all of these amendments. Rather, staff seeks to provide the Council a full range of options that might be considered for implementation over the next several years,

POSSIBLE FUTURE ACTIONS:
Staff is currently working on the Group 1 amendments and plans to bring them to Planning Commission in April 2011. Our primary objective with this first batch of amendments is to come back to the Council quickly with those items that have broad support, no later than June 2011.

Staff's approach is to consider most of these changes citywide initially. If merchants or community members in a particular district oppose the change, or request extensive research, staff will suggest to the Planning Commission that we either drop or modify that amendment appropriately, and continue as expeditiously as possible. For example, Commission members, staff and the public discussed some of these potential amendments as an information item at the February 16, 2011 Planning Commission meeting. Staff had expected broad support for these amendments, but it became apparent that one or two of these may not be welcomed in some commercial districts. As a result, the breadth of the proposal might change during the process.

The Group 1 changes currently under review are described in greater detail below. The numbers are cross referenced to Attachment 1 of this report.

I.A. Sidewalk Seating: Lower the level of discretion for sidewalk seating, and continuing the Public Works encroachment permit currently required.

II.B. Restaurants: Lower the level of discretion for restaurants based on size (from UPPH and AUP, to AUP and ZC.)

II.C. Pedestrian-oriented businesses: Lower the level of discretion for various pedestrian-oriented businesses in each commercial district.

II.D. Ground floor office uses. Allow "office retail" and other pedestrian-oriented uses on the ground floor with a zoning certificate, and require a transparent window allowing visibility into the interior of the building.

III.A. Beer & Wine with food. Allow service of beer and wine with food at quick and full service restaurants in all districts with an AUP, rather than Use Permit Public Hearing (UPPH).

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
The zoning changes should improve the City's business climate, which will provide long term fiscal benefits to the City through increased sales tax revenues.

CONTACT PERSON
Dan Marks, Director, Planning & Development Department, 981-7410
Michael J. Caplan, Economic Development Manager, 981-2490

Attachments:
1: Potential Zoning Changes to Encourage Economic Development
2: 12/7/10 City Council Referral, *Encouraging Economic Development and Increasing City Revenue from Business Activity*

Attachment 1. Potential Zoning Changes to Encourage Economic Development, for Council Consideration

Prepared by Land Use Planning Division and Office of Economic Development, 02/18/11

Key: Potential Zoning Amendments: Broad range of potential changes for Council consideration.
Staff Effort (L/M/H): Expected level of effort by Planning Staff
Economic Impact (L/M/H): Expected impacts onbusiness activity

Priority Grouping	Potential Zoning Amendment	Focuses on . .	Staff Effort L/M/H	Econ Impact L/M/H
1	I.A. AUP to ZC for sidewalk seating and furniture, subject to ADA compliance, staff-level design review? **[City Council Referral 12/7, Item number c)viii]**	Existing Business	Low	Med
1	II.B. UPPH to AUP (for large) and ZC (for small) restaurants, all locations (but AUP if serving beer & wine)	New Businesses	Med	High
1	II.C. AUP to ZC for pedestrian-oriented businesses consistent with purposes of district.	New Businesses	Low	High
1	II.D. Allow "office retail" and other pedestrian-orented uses on the ground floor w/ ZC, up to 2,000 s.f. **[City Council Referral 12/7 c)iv]**	New Businesses	med	high
1	III.A. UPPH to AUP for beer & wine with food. **[City Council Referral 12/7, Item number c)ii, and City Council Referral 5/4, Telegraph, Item 1]**	New and existing businesses	Med	High
2	I.E. AUP to ZC for moderate reconfiguration of space (collapsing/expanding); AUP for larger reconfigurations	Existing Business	Med	High
2	II.A. UPPH or AUP to ZC for certain changes of use	New Businesses	Low	High
2	I.B. AUP to ZC to extend business hours. **[City Council Referral 12/7, Item number c)iii Solano and 5/4 Telegraph]**	Existing Business	Low	Low
2	II.E. Remove, modify, or temporarily suspend quota restrictions **[City Council Referral 12/7 Item number c)i for**	New Businesses	High	High

2	II.H. Grandfather parking for existing buildings **[City Council Referral 12/7, Item number c)v]**	New businesses	Med	High
2	III.B. Remove quota *size* restrictions	New and existing businesses	Low	Low
2	I.C. AUP to ZC for incidental ive entertainment (acoustic)	Existing Business	Low	Low
3	I.D. UPPH or AUP to ZC to change full service to quick serve food service, quick service to carry out, and vice versa.	Existing Business	Med	Low
3	I.F. Rezone select MULI parcels to C-W.	Existing Business	High	High
3	II.F. Develop incentives for property owners to lease vacant space. **[City Council Referral 12/7 c)vi]**	New Businesses	High	High
3	II.G. ZC for new business signs if meet standards. **[City Council Referral 12/7/10 c)vii]**	New Businesses	High	High

Attachment 2

City Council Action on Item 23, 12/7/10, Encouraging Economic Development and Increasing City Revenue From Business Activity

Action:

1 M/S/C (Worthington/Maio) to adopt the following:

a) Direct the City Manager to bring back to the City Council an amendment to Resolution 64,077–N.S. allowing the City Manager, at the recommendation of the Economic Development Manager, to defer zoning fees for new and relocating businesses in commercial districts. These fees would be due concurrent with any business license fee on the either the first, second or third anniversary of the payment of the business license fee. Staff to return with financial implications deference of fees for one, two or three years.

b) Mandate a review of the intake process for building permits intended to increase applicant understanding of all requirements that must be met before a permit can be issued. At present, some applicants claim that they were not notified of all requirements at the beginning of the process and that the issuance of their permit was delayed by what they feel was a "new" requirement. Consider possible building permit intake session with a staff member who would explain requirements including possible new ones that could be triggered if some threshold is exceeded. If intake session is not feasible because of staffing, consider improvements to checklists.

c) Forward to staff and the Planning Commission recommendations contained in Section B of the report for action.

i. Suspend Solano Avenue food service quota. A recent survey of over 1300 citizens, 65% of whom lived within 8 blocks of Solano, indicated overwhelming support for removing the quota. There have been several food services desiring to locate on Solano but unable or unwilling to go through the lengthy and costly permitting process of an exception to the quota.

ii. Allow restaurants with seating to obtain a beer/wine license for incidental alcohol service with meals with an AUP rather than a Use Permit and Public Hearing. Staff will establish a set of standard conditions for alcohol service with meals. This measure will reduce the time and expense required for restaurants to obtain a permit while reducing the Planning Dept. workload and allowing planners and ZAB members to spend their time on projects that are more controversial. Any controversial application for restaurant alcohol service could still be set for a public hearing before the ZAB. Staff to clarify what districts should be included.

iii. Extend hours of operation on Solano Avenue to 11 pm. Referencing the above survey, there was overwhelming support for more evening activity on the street.

iv. Allow 'office retail', yoga, exercise and dance studios, massage and other types of physical therapy, and artists' studios up to 2000 square feet on the ground floor with a Zoning Certificate. 'Office retail' is defined as office uses generating significant foot traffic as opposed to professional offices that generate little if any such pedestrian activity. Require that storefront windows be transparent and provide pedestrian viewing into the front 20' of storefront. Zoning Certificate would have attached a standard set of conditions to further protect the public from undesirable uses.

v. Standardize the parking requirement at 2 spaces per one thousand square feet and maintain the 'grandfather' exemption for preexisting buildings.

vi. Investigate providing incentives to property owners to encourage leasing and establish disincentives to motivate property owners not to leave their properties vacant.

vii. Revise sign ordinance to exempt signs for businesses under 2000 square feet from design review by providing basic design standards (material, lettering, illumination, etc.) in addition to existing

size and numerical limitations. The design review process is expensive and time consuming and results in new business installing 'temporary' banner signs that remain for months or years. Businesses that do not want to conform to the basic design standards could still opt for the conventional design review process.

viii. Consideration of tables, chairs and planters as of right and consistent with American Disability Act (ADA) standards.

Vote: Ayes - Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Mayor Bates; Noes - None.

23E.68.030 Uses Permitted

A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040.

Table 23E.68.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements**
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 7,500 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)
Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks) Under 7,500 s.f. Within the A.D.O.	AUP ZC AUP	Within the Arts District Overlay, see Section 23E.68.040
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents Within the A.D.O.	ZC AUP	Subject to additional requirements; see Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040

Medical Practitioners Within the A.D.O.	ZC AUP	Including Holistic Health and Mental Health Practitioners Within the Arts District Overlay, see Section 23E.68.040
Other Professionals and Government, Institutions, Utilities Within the A.D.O.	ZC AUP	Subject to additional requirements; see Section 23E.68.060.E Within the Arts District Overlay, see Section 23E.68.040
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-Oriented Businesses	UP(PH)	Subject to additional requirements; see Section 23E.16.030 Prohibited on Public Serving Frontages
Alcoholic Beverage Service of beer and wine incidental to food service at quick and full service restaurants	AUP	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service.
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center	UP(PH)	Subject to additional requirements; see Section 23E.68.060.E
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments: Carry Out Food Service Stores Under 2,000 s.f. Within the A.D.O.	 AUP ZC AUP	 Within the Arts District Overlay, see Section 23E.68.040
Quick Service Restaurants Under 2,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Full Service Restaurants Under 2,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Subject to additional requirements; see Section

		23E.68.060.E
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC	Subject to additional requirements; see Section 23E.68.060.E
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	UP(PH)	
Theaters, including Motion Pictures and Stage Performance	AUP	
Automobile and Other Vehicle-Oriented Uses		
Automobile Parts Stores	Prohibited	
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals, and motorcycle stores	UP(PH)	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building: When not abutting R-District When abutting R-District	 AUP UP(PH)	
Drive-in uses	Prohibited	
Surface Parking Lots: Eight (8) or fewer Off-street Parking Spaces More than eight (8) Off-street Parking Spaces	 AUP Prohibited	
Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District When seating abutting R-District	ZC AUP	

Combination Commercial/Residential Uses		
Live/Work Units Not requiring a UP under Chapter 23E.20 Requiring a UP under Chapter 23E.20	 ZC UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F Subject to Section 23E.68.070
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment Unamplified Amplified	 ZC AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		
Accessory Buildings and Structures	As per R-5 District	See Table 23D.44.030
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, including multifamily developments	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Group Living Accommodations		