

Agenda Item Number: 11
City Council Meeting Packet of: October 6, 2026
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Staff initially began enforcement procedures due to complaints. The City's enforcement actions were based on the operation of a commercial outdoor barbeque business on a site where it is prohibited under the Zoning Code, and not directly related to any smoke or air quality conditions that may have existed. At the June 2, 2026 City Council meeting, public comments and Council discussion highlighted neighbor complaints about smoke from the business's operations. Staff has been working cooperatively with the business owner, Mr. Kris Austin, to pursue compliance while exploring options.

Since that time, the business owners have been working towards a solution for their business. They have remained in communication with City staff and have voluntarily shared information with the City regarding their operations and longer-term business planning. Because that information includes proprietary and confidential business matters, those details are not included in this report. A&M can be asked to elaborate on these efforts.

On July 7, 2026, Councilmembers Hinton and Carter brought forward Agenda Item No. 11, requesting that the City Council direct staff to return with proposed Zoning Code/Map amendments and/or other options that would allow commercial outdoor barbeque uses, subject to a discretionary use permit, within specified zoning districts. The Council directed staff to evaluate potential zoning text amendments and/or targeted rezoning, develop performance standards addressing smoke, odor, noise, hours of operation, fire safety, and neighborhood compatibility, and return with a detailed analysis, including the typical process and estimated costs for each option. No enforcement would occur during the interim period, as long as A&M BBQ remained in communication with the City regarding possible solutions. This report responds to that direction.

Because outdoor commercial barbeques are not currently listed as a permitted or conditional use within the CO District, City Council must decide how to legally accommodate the use on the subject parcels if it wishes to do so.

Staff has identified two options for the Council's consideration: a site-specific rezoning of the parcel in question (Option A), or a citywide zoning text amendment adding the use to the CO District as a conditionally permitted use (Option B). Both approaches would include a conditional use permit and the adoption of specific performance standards for these uses to control smoke and odor. The two Options are outlined and discussed below.

For either option, the City can process the use permit concurrently with the proposed zoning amendment, so both are approved simultaneously.

DISCUSSION:

The table below compares the two zoning approaches across the key considerations relevant to the City Council's decision.

Criterion	Option A: Rezone Single Parcel	Option B: Zoning Text Amendment (CO District, subject to Use Permit)
Scope of action	Site-specific; changes the zoning designation of one parcel only; would require conditional use permit	District-wide; adds "Outdoor Commercial Barbeques" as a conditional use across all CO-zoned parcels citywide
Evaluation of Approach	Rezoning of a particular property usually disfavored, especially if a use is being taken away.	Uniform application of standards across a zoning district is generally preferred.



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Criterion	Option A: Rezone Single Parcel	Option B: Zoning Text Amendment (CO District, subject to Use Permit)
Precedent-setting	Site-specific precedent; future similar requests elsewhere require separate rezonings, inviting inconsistent outcomes	Establishes one repeatable process (use permit) for all similarly situated CO parcels
Processing time/cost (initial project)	Requires Planning Commission recommendation and review at two City Council meetings. Final approval would occur in 120-150 days. 32 Estimated 32 hours including Associate Planner, City Attorney and consultant hours (approximately \$5,250)	Requires Planning Commission recommendation and review at two City Council meetings. Final approval would occur in 120-150 days. 32 Estimated 32 hours including Associate Planner, City Attorney and consultant hours (approximately \$5,250)
Long-term administrative burden	Each future request elsewhere would require another rezoning with associated workload	One-time code amendment; subsequent applications processed via use permit with established findings and standards
Public notice/hearing	Targeted public notice to property owners near the one parcel (600 foot notice)	Broader notice (all CO-zoned areas potentially affected); more comprehensive public engagement
Flexibility to impose conditions	Rezoning itself would require a use permit to address site-specific impacts	Rezoning itself would require a use permit to address site-specific impacts
CEQA review	Project-level review of a single parcel	Reviewed at a programmatic level for the district; subsequent use permits can tier off that analysis
Reversibility/amendment	Reverting requires another rezoning of that parcel only.	Reverting/adjusting standards requires another text amendment, but applies uniformly
Outcome for Applicant	Applicant gets appropriate zoning for the use on subject site once the site is rezoned; a Use Permit will need to be applied for. Performance standards would need to be met for permit approval.	Applicant can apply for Use Permit concurrent with Zone Text Amendment; the required findings and performance standards are outlined in Code. Performance standards would need to be met for permit approval.

CEQA Analysis

Both a single-parcel rezoning and a zoning text amendment are discretionary approvals and each constitutes a “project” under CEQA (Pub. Resources Code § 21065); neither is automatically exempt.



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Option A: A parcel-specific rezoning would be reviewed as a project-specific action. An initial study would be performed to determine the appropriate level of CEQA review for this single-parcel rezoning option, which would likely be a Mitigated Negative Declaration (MND).

Option B: Because the text amendment would apply district-wide, it is suited to programmatic CEQA review. Given that potential air quality and odor impacts have already been identified, and that the proposed performance standards are intended to reduce those impacts to a less-than-significant level, those standards would function as mitigation under CEQA and a Mitigated Negative Declaration (MND) would likely be the appropriate environmental document for this option.

For either option, the exact CEQA approach will not be determined until further analysis is completed based on the specifics of the proposal.

STAFF ANALYSIS:

If the Council wants to move forward with any rezone action; staff would recommend Option B; the zoning text amendment, for the following reasons:

- A zoning text amendment establishes one uniform, repeatable standard for all similarly situated CO-zoned parcels. A district-wide legislative action supported by an adopted MND and codified performance standards is more easily understood and administered than individual parcel-specific rezonings.
- Updated performance standards would give future applicants clear, up-front design and operating requirements and give staff an established framework for use permit findings and conditions of approval. These performance standards could be applied to other zoning districts as well.
- Because the use remains subject to a use permit, the City would retain site-specific discretion to impose additional or more restrictive conditions where warranted, such as proximity to sensitive receptors.

If a rezoning moves forward, staff recommends the following performance standards be incorporated into the Code as performance standards that must be met for approval of a use permit:

Air Quality & Odor Control

- require Air District permitting for all facilities not meeting the BAAQMD Section 2-1-117.1 exemption threshold
- require best available control technology for grease/smoke abatement,
- Specify height and setback requirements for exhaust stacks
- Establish fuel-type limits to reduce smoke
- Establish an odor complaint response protocol coordinated with the Air District's complaint line;
- Establish Hours of Operation for use of smokers
- Add provisions for monitoring and enforcement, including periodic use permit review and coordination with BAAQMD's Compliance & Enforcement Division.

USE PERMIT PROCESS AND ESTIMATED COSTS:

Under Option A or B, adoption of the zoning text amendment would not, by itself, authorize outdoor commercial barbeque operations on any parcel. The operator would still need to obtain a separate, site-specific Use Permit before operating (or continuing to operate in this case). That Use Permit would be processed as a standard (non-formula-business) Conditional Use Permit under SMC Title 17, generally as follows:

- The applicant submits a complete Use Permit application, including a site plan, equipment/operations narrative, and evidence of compliance with the adopted performance standards (fuel type, equipment, stack height/setbacks, hours of operation, odor complaint protocol).
- Planning staff reviews the application for completeness and refers it to the Bay Area Air Quality Management District, Fire Department, and other responsible agencies as applicable.
- The application is set for a noticed public hearing before the Planning Commission.



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- The Planning Commission must find, among other things, that the use is consistent with the General Plan and Zoning Code and will not be detrimental to the health, safety, or general welfare of persons in the area, before approving the permit, with or without additional site-specific conditions.
- Following a decision, there is a period during which it may be appealed to the City Council, unless the application requires a different approval from the City Council, in which case the Planning Commission makes a recommendation to the City Council, who is the decisionmaker.

If the City Council approves either Option A or Option B and directs staff to proceed, staff recommends that A&M Barbeque be permitted to submit its Use Permit application concurrently with the zoning text amendment and MND, rather than waiting for the text amendment to be adopted first. The Use Permit application would be processed on a parallel track, and would be brought to the Planning Commission for hearing and recommendation concurrently. The City Council would then make a final decision on both the proposed zoning amendment and use permit. This concurrent-processing approach is consistent with the stay on code enforcement described above, and is intended to minimize delay for the existing operator provided it timely applies and demonstrates compliance with the adopted performance standards.

Under the City's current Master Fee Schedule, a Standard Conditional Use Permit is not a flat fee but a \$5,000 deposit billed against actual staff and consultant time at fully allocated hourly rates. The applicant is responsible for the full cost of processing, which may exceed the deposit for an application requiring extensive review.

These figures reflect the City's currently adopted fee schedule. Final costs to a given applicant depend on the complexity of the specific application.

Current code enforcement/abatement action affecting the existing use has been stayed to allow time to pursue the zoning text amendment and Use Permit. That stay is conditioned on the applicant making timely application for the Use Permit and demonstrating compliance with the adopted performance standards. If the applicant does not timely apply for the Use Permit, or if the Use Permit is not ultimately approved, the stay would be lifted, and the City would resume code enforcement action against the unpermitted use. To date, the business owners have updated the City with their plans toward a resolution.

As noted above, that information includes proprietary and confidential business matters; those details are not included in this report. A&M can be asked to elaborate on these efforts.

If the City Council decides not to move forward with either Option A or Option B, there will be no path for A&M to legalize, and Code Enforcement will recommence. Any code enforcement will follow the City's standard practices, which involves notices and time for corrective action, before potentially escalating to fines or other remedies. The City does not have dedicated Code Enforcement staff, and Code Enforcement is handled concurrently with other City responsibilities.

CITY COUNCIL GOALS/PRIORITIES AND GENERAL PLAN CONSISTENCY:

This agenda item represents the City Council goals/priorities as follows:

City Council Goal 4: High Performance Organization
Transparency, Accountability, and Public Trust

General Plan Consistency: The recommended zoning text amendment does not alter the underlying General Plan land use designation for CO-zoned parcels; outdoor commercial barbecues would be conditionally allowed within the existing designation, and each subsequent use permit application would be evaluated for consistency with applicable General Plan policies on a site-specific basis.



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PUBLIC NOTICE:

This item has been noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date. If the City Council moves forward with Option A or B, there will be additional public notice as those options move forward.

PUBLIC COMMENT:

The City Council has received multiple public comments related to A&M Barbeque. All comments have been posted to the city website meeting pages. All comments received after publication will be provided to the City Council as supplemental materials prior to or during the meeting.

FISCAL IMPACT:

Staff and/or consultant time to prepare this agenda item has been accommodated within the Planning Division's current budget. Staff and consultant time to prepare the zoning text amendment and accompanying environmental review is estimated to be 32 hours including Associate Planner, City Attorney and consultant hours (approximately \$5,250).

As noted above; a use permit application deposit would be required in an initial deposit amount of \$5000.

RESTATED RECOMMENDATION:

That the City Council direct staff on the following options:

OPTIONS:

1. Direct staff to prepare the zoning text amendment described in this report (Option B), including the use permit provisions, the suggested performance standards, and a Mitigated Negative Declaration, and return to the City Council for adoption. (Staff recommended.) If this Option is selected, the Applicant would need to make timely application for the required Use Permit and demonstrate compliance with the revised performance standards to continue the stay on enforcement.
2. Direct staff to instead process a site-specific rezoning of the subject parcel (Option A), including the appropriate CEQA review document, and to amend the existing provisions for Outdoor Commercial Barbeques to add additional performance standards related to air quality and odor.
3. Direct staff to not take any rezoning action particular to the subject site, and re-initiate enforcement action.
4. Provide alternate direction to staff.

ATTACHMENTS:

None

APPROVALS:

Department Head Approval: Approval Date: 9/17/26

CEQA Determination (Planning): Approval Date: 9/17/26

While a Mitigated Negative Declaration would need to be prepared for the recommended zoning text amendment, this item requesting direction from the Council is not a project under CEQA.

Administrative Services (Financial) Approval Date: 9/29/2026

Costs authorized in City Approved Budget: ☐ Yes ☒ No ☐ N/A

Account Code (if applicable) _____

City Attorney Approval: Approval Date: 9/29/2026

City Manager Approval: Approval Date: 9/29/2026