

Planning and Development Department
Land Use Planning Division

A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code, Title 23

AUP #13-2000008

Property Address: **1330 TENTH STREET**

Permittee Name: **MICHAEL FOGELMAN**

Use and/or Construction Permitted: to operate a temporary art studio (Firehouse Art Collective) as part of a retail use in an existing retail building pursuant to:

- Section 23B.40.030 to establish a temporary use.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on April 9, 2013.

Attest: Terry Blount
Terry Blount, AICP, Principal Planner
For Debbie Sanderson, Zoning Officer

April 9, 2013
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

MARCH 18, 2013

1330 Tenth Street

Administrative Use Permit #13-20000008

To operate a temporary art studio (Firehouse Art Collective) as part of a retail use in an existing retail building (formerly Smith and Hawken garden store).

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303(c) of the CEQA Guidelines (“New Construction or Conversions of Small Structures”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

FINDINGS FOR APPROVAL

2. As required by Section 23B.40.030 of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The art studio use is temporary (limited to one year from the date the permit is exercised);
 - The art studio is part of a retail use which is typical of a commercial district;
 - There is sufficient parking and ample public transportation in the vicinity;
 - The art studio use will operate within the District hours; and
 - The art studio use will not involve any industrial processes, such as wood working, glass blowing, or other “heavy” art making, and for this reason will not have any odor, noise, or other impacts.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Extensions of time are not allowed unless approved by the Zoning Officer, in conformance with 23B.40.030.C.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All City and Other Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has applied for a building permit.
- D. Permits may be declared lapsed by the Zoning Officer upon 14 days written notice to the permittee. Any determination by the Zoning Officer that a permit has lapsed may be appealed to the Board in the same manner as an action by the Zoning Officer on an AUP.

8. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Approval of Any Building Permit

- 9. No construction is approved as part of this permit. If required for temporary service or minor interior improvement, electrical, mechanical, plumbing and building permits may be issued subject to review and approval of the Zoning Officer. Prior to issuance of occupancy permit or final inspection, all construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 10. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **JANUARY 22, 2013**.

At All Times (Operation):

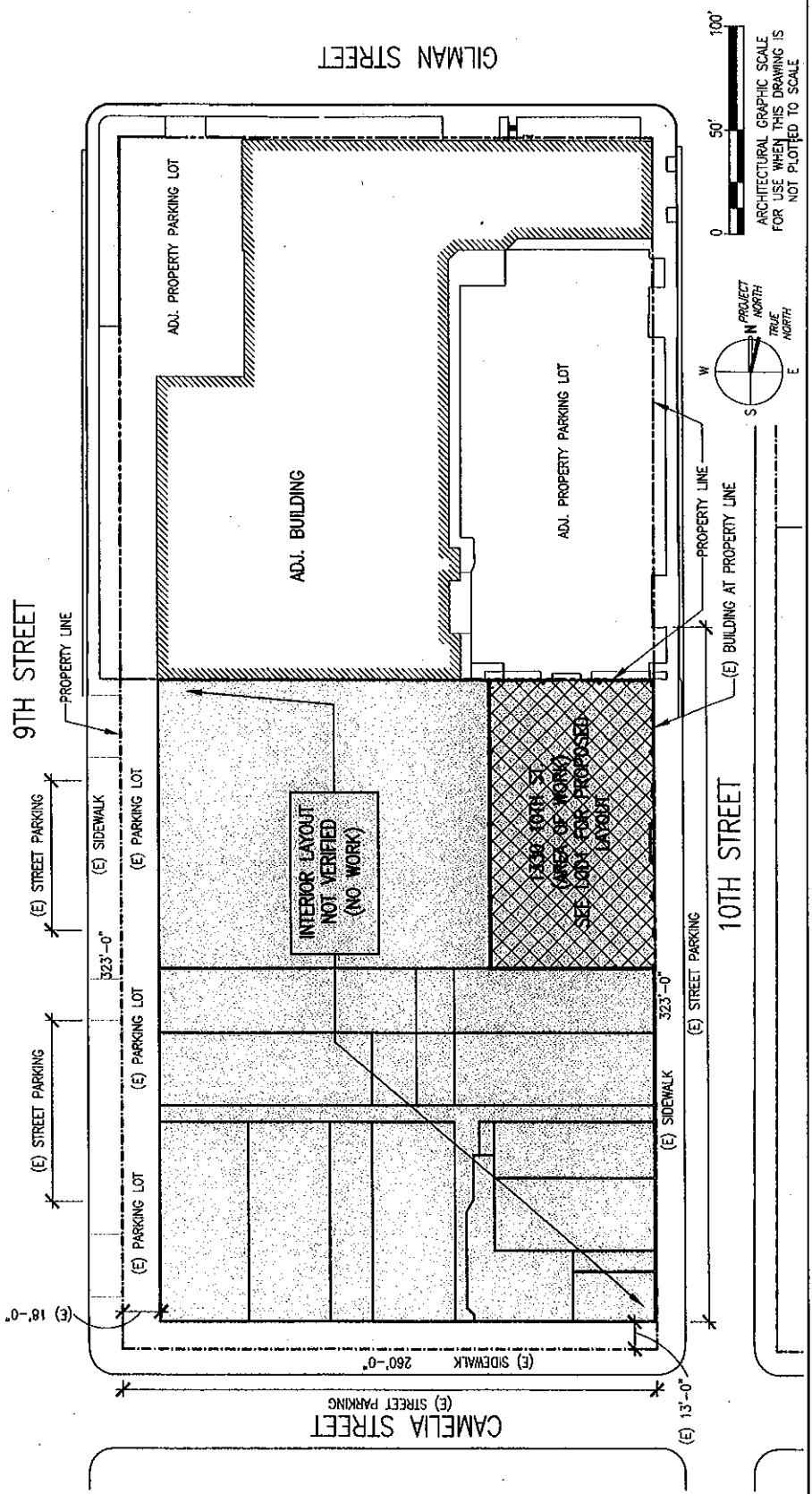
11. The temporary art studio use shall be in operation (open to the public) not more than one (1) year from the date this Administrative Use Permit is exercised.
12. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
13. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
14. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.



Elizabeth Greene, Senior Planner for
Debra Sanderson, Zoning Officer

RECEIVED
 JAN 22 2013
 LAND USE PLANNING

APPROVED PLAN
 3/14/13
 DATE
 D.R. Conditions Attached
 S.A.U.P. Conditions Attached
 U.P. Conditions Attached



JAN 22 2013

LAND USE PLANNING



1330 10TH STREET
BERKELEY, CA 94710

ALL SERVICES AND MATERIALS LISTED
HEREIN ARE THE PROPERTY OF AVILA DESIGN
AND ARE NOT TO BE REPRODUCED OR
TRANSMITTED IN ANY FORM OR BY ANY
MEANS WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

PROJECT NUMBER
2012-071

SCALE
3/32" = 1'-0"

DRAWN BY
CT, 01/11/13

REVIEWED BY
DH/DPA

SHEET TITLE
LEASE OUTLINE

DRAWING

SHEET NUMBER

LOD1

THIS LEASE OUTLINE DRAWING IS AN APPROXIMATION OF THE ACTUAL FIELD CONDITIONS. THE EXACT AREA AND SPACE CONFIGURATION SHOULD BE CONFIRMED BY THE TENANT. THE SPACE MAY BE MODIFIED BY THE LANDLORD. IS NECESSARY, DIMENSIONS OF THE SPACE ARE TO THE CENTER OF SHARED TENANT DEMISING WALLS AND TO THE STOREFRONT LEASE LINE AND OUTSIDE FACE OF BUILDING SERVICE WALLS.

