



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 #13-20000068**

Property Address:

**2133-35 UNIVERSITY AVENUE**

Permittee Name:

**BONNIE HUGHES**

Use and/or Construction Permitted: to establish a temporary use (Berkeley Art's Festival Office, Art Gallery, and show venue with incidental amplified sound) within an existing vacant commercial tenant space, not to extend past June 1, 2014 pursuant to:

- Section 23B.40.010.A to establish a temporary use not to exceed June 1, 2014.

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 June 7, 2013.

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

June 7, 2013  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MAY 23, 2013

### **2133-35 University Avenue**

#### **Administrative Use Permit #13-20000068**

**To establish a temporary use (Berkeley Art's Festival Office, Art Gallery, and show venue with incidental amplified sound) within an existing vacant commercial tenant space, not to extend past June 1, 2014.**

#### **CEQA FINDINGS**

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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 15301 of the CEQA Guidelines ("Existing Facilities"). 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**

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2. As required by Section 23B.28.050.A 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 Berkeley Arts Festival (BAF) has coordinated shows and events, including live performances with incidental amplified sound, in Berkeley for over 20 years. Each year the BAF receives money from the City Council to help offset the operating costs. The mission and activities of the BAF are consistent and supportive of the Downtown Area plan and the Zoning District in that the BAF supports the Arts and entertainment and activity within the downtown by providing organization and venues for shows that are centrally located and within close proximity to public transit.
  - The BAF will temporary occupy a vacant tenant space within a building that will likely undergo redevelopment within a year. By allowing the BAF to temporarily

occupy the space, the commercial street will have more pedestrian activity and one less vacant storefront.

- In order to limit detriment, Condition of Approval #14 requires that the BAF not rent out the venue to any third party operators and also requires that at least one representative from the BAF is at each event.
- This temporary use shall only last until June 1, 2014 unless otherwise extended by the Zoning Officer.

## **STANDARD CONDITIONS**

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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)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

### **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.

### **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 Applicable Laws and 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. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

**8. 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: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. 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:

- 10. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **MAY 8, 2013**.

**At All Times (Operation):**

- 11. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 12. 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.

13. 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.
14. The operators of the Berkeley Arts Festival shall not rent out the venue to any third party operator and shall have at least representative on site for all shows or live entertainment performances.
15. The use of the space, including live entertainment activities are subject to the regulations of the City's Noise Ordinance.

A handwritten signature in black ink, appearing to read 'Nathan Dahl', is written over a horizontal line.

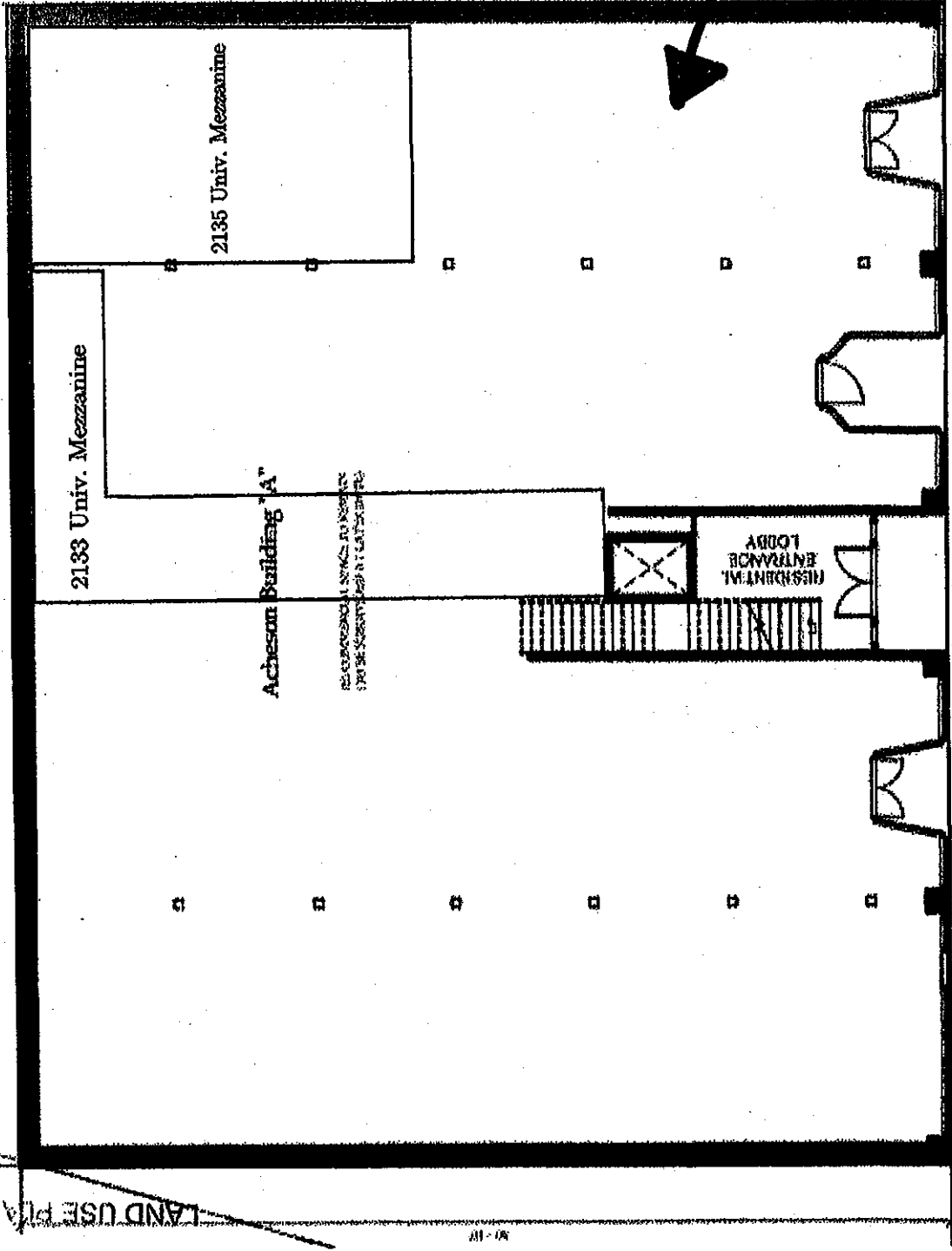
Prepared by: Nathan Dahl for  
Debra Sanderson, Zoning Officer



RECEIVED

MAY 08 2013

LAND USE PLANNING



Subject Space

2133 2135

University Ave.

|   |         |
|---|---------|
| APPROVED PLAN                                       | 5/22/11 |
| PLANNING  | DATE    |
| <input type="checkbox"/> D.R. Conditions Attached   |         |
| <input type="checkbox"/> A.U.P. Conditions Attached |         |
| <input type="checkbox"/> U.P. Conditions Attached   |         |