



Planning and Development Department  
Land Use Planning

# U S E P E R M I T

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## CITY OF BERKELEY ZONING ORDINANCE Berkeley Municipal Code Title 23

### USE PERMIT # 13-10000013

Property Address: **1799 UNIVERSITY AVENUE**

Permittee Name: **JOEL DiGIORGIO**

**Use and/or Construction Permitted:**

to establish a quick service restaurant, extend the restaurant hours until 2:00 AM every day, increase the hours of incidental service of beer, wine and distilled spirits at a quick service restaurant, establish an Amusement Device Arcade and modify Use Permits #A1954/VAR#1401 and UP #99-10000046 which established a full service restaurant with incidental service of beer, wine and distilled spirits until 10:00 PM.

- Administrative Use Permit to establish a Quick Service Restaurant over 1,500 square feet, under BMC Section 23E.36.030
- Administrative Use Permit to extend the hours of business past midnight, under BMC Section 23E.36.060.A
- Use Permit to increase alcohol beverage service by extending the hours of operation of an existing restaurant that sells distilled spirits, under BMC Section 23E.16.040.B
- Use Permit to allow an Amusement Device Arcade consisting of up to 10 Amusement Devices, under BMC Section 23E.36.030
- Use Permit to modify existing Use Permits #A1954/VAR #1401 and UP #99-10000046, under BMC Section 23B.56.020

**FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED**

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on June 13, 2013.

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MAY 23, 2013

### **1799 University Avenue**

**Use Permit #13-1000013 to establish a quick service restaurant, extend the restaurant hours until midnight Sunday through Thursday and 2:00 AM Friday and Saturday, increase the hours of incidental service of beer, wine and distilled spirits at a quick service restaurant, establish an Amusement Device Arcade and modify Use Permits #A1954/VAR#1401 and UP #99-1000046 which established a full service restaurant with incidental service of beer, wine and distilled spirits until 10:00 PM.**

#### 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.

#### GENERAL NON-DETRIMENT FINDING

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2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or 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, for the following reasons:
  - A. The proposed business would establish a quick service restaurant within a commercial building previously occupied by a full service restaurant and thus would not change the existing permitted use within the General Commercial District.
  - B. The expanded hours of the business should not significantly impact the neighboring residential uses because the business will be conducted indoors, and conditions will be placed on the permit to reduce any impacts related to loitering, litter and noise.
  - C. The proposed service of alcoholic beverages would be incidental to food service and because of the incidental nature of the service, and the size and location of the

restaurant, alcohol sales will not have a significant detrimental impact. There is no other establishment within a one thousand-foot radius that is in the same category of alcoholic beverage sales or service (47 – On Sale General - Eating Place).

- D. The amusement device arcade will be incidental to the restaurant use and is not located within 600 feet of a primary or secondary school (BMC Section 23E.16.050).
- E. The Berkeley Police Department reviewed the application and has no objection to the project given the proposed findings and conditions.
- F. The business will be subject to conditions of approval restricting the sale and consumption of alcohol.
- G. The permit is conditioned to include measures to mitigate potential impacts associated with the incidental alcohol service and the incidental amusement device arcade and is therefore expected to meet applicable performance standards for potential off-site impacts.
- H. All conditions of approval in Use Permit #A1954 and UP #99-10000046 continue to apply except to the extent they are inconsistent with this modification, in which case they are superseded. This permit contains all of the relevant conditions of approval, both those from the above mentioned permits as well as any new ones imposed with this approval.

### OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23E.36.090.B, the Zoning Adjustments Board finds the proposed use is consistent with the purposes of the District in that:
  - A. The restaurant is commercial in nature and thus helps to implement the General Plan's designations for Avenue Commercial Districts. The continuation of a restaurant use at the site will strengthen the local economy by providing an eating establishment that caters to both the neighborhood as well as the larger community. Allowing the existing alcohol service to continue during the extended business hours will result in a positive customer experience as well as an economic benefit to the city.
  - B. The restaurant and incidental uses will provide activities not commonly found along University Avenue or the City in general. Extending the hours of the business will provide a late night venue for meals for people leaving evening jobs or movies, theaters, etc. The arcade use will provide a unique venue for families and adults to play games that are not available in their homes, and are not commonly available in commercial establishments.
  - C. The restaurant is compatible with adjacent commercial and residential areas. The new quick service restaurant represents a continuation of existing restaurant uses

at the site, which is characterized by restaurants, retail sales and services, offices and mixed-use development. No changes will be made to the existing building footprint or the exterior façade, which is an attractive building along University Avenue. The establishment will operate entirely within a structure, and will be subject to conditions to assure its compatibility with adjacent residential areas.

- D. The continued use of the site for a restaurant will implement permitted use regulations for the University Avenue Strategic Plan Overlay area to revitalize the University Avenue corridor through appropriate economic development. The existing restaurant use has brought activity to that portion of University Avenue while remaining compatible with the existing residential and commercial uses. The proposed use will have similar conditions that will allow the new restaurant to continue to be complementary to the surrounding uses.

## STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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### 1. **Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first 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 approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

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

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether

oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

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

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

**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.** 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 OF APPROVAL**

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

**Prior to Issuance of Any Building Permit**

**10.** Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and

responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

□ Noise Management Individual \_\_\_\_\_  
Name Phone #

11. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

**During Construction:**

12. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
13. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
15. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

20. The project shall conform to the plans and statements in the Use Permit.
21. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **February 19, 2013 and May 3, 2013.**

**At All Times:**

22. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
23. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
24. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.

**CONDITIONS BY PROJECT TYPE**

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**ALCOHOLIC BEVERAGE SERVICE CONDITIONS**

25. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
26. The applicant shall comply with ABC regulations for License Type 47, which requires that the food establishment operate as a bona fide eating place, make actual and substantial sales of meals during normal meal hours, and that the establishment operate at least five days a week.



27. The applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:
- A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
  - B. The sale of alcoholic beverages for on-site consumption shall be limited to **8:00 AM until midnight, Sunday through Thursday, and 8:00 AM until 2:00 AM, Friday and Saturday;**
  - C. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
  - D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages within 1,400 feet of a school.
28. A Berkeley Police Department *Crime Prevention Through Environmental Design* (CPTED) survey shall be completed prior to commencing alcohol service. As per the Berkeley Police Department Site Survey dated April 23, 2013, this Police Department recommends the following security measures:
- A. Lighting:
    - i. Exterior lighting positioned in such a way as to illuminate all areas of 1799 University's property. The lighting should be sufficient enough to provide clear facial recognition and good color rendition within 25 feet.
    - ii. All exterior doors should have their own light source. The light source should adequately illuminate the door, entryway, as well as the presence of any person in the door area.
    - iii. A monument/building identification signs should have their own light source.
    - iv. Two light sources should be added to the building's west façade to light the adjacent building's (1775 University Avenue) parking lot, since patrons of the restaurant frequently utilize that lot.
  - B. Landscaping:
    - i. Plants and shrubs should be trimmed to a maximum height of 42 inches.
    - ii. Tree canopy heights should be trimmed to a minimum height of 7 feet, to provide better surveillance from the street.
    - iii. Consider the use of thorny or bristled plantings under vulnerable or sensitive windows.
  - C. Signage:
    - i. All doors into the building that are not the main entrance should be posted as such, and signs should direct visitors to the main entrance.
    - ii. "No Trespassing" signs should be posted near all doors to the building that alert individuals who are not patrons or authorized guests of 1799 University Avenue.

D. Security Cameras:

- i. Security cameras should be installed on the exterior of the building to provide monitoring of the Grant Street façade as well as the building's north parking lot and adjacent west parking lot (1775 University Avenue). Ideally, the video monitors should be located near a place staff is available to monitor them during business hours. The cameras should also be linked to a Digital Video Recorder (DVR) so that images are captured and recorded even after business hours.

29. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control, within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.
30. Employees shall not sell or serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
31. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
32. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
33. This Use Permit, including these and all other required conditions, shall be kept on site and made available for viewing by any interested party.
34. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
35. There shall be no service or consumption of alcohol on the public right-of-way.

**FOOD SERVICE CONDITIONS**

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

36. 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.

37. The approved floor plan, including the seating area, shall be followed and the operation shall be conducted as presented to the Board. Expansion of the seating area or changes to the buildings occupant load rating shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
38. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
39. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles and shall recycle such containers.
40. The operator of a quick-serve or carry out restaurant shall place a waste receptacle near the entry way and shall ensure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.

#### **AMUSEMENT DEVICE ARCADES**

41. Up to 10 amusement devices/video games shall be permitted on site. These games can be located anywhere in the dining areas of the restaurant, and may be replaced by additional seating should the arcade use be reduced or eliminated.
42. The games shall be incidental to the food use, and shall be for the use and enjoyment of the restaurant patrons only.
43. The games shall be token-operated, with the tokens purchased from a restaurant employee rather than from a dispensing machine.

#### **COMMERCIAL USE CONDITIONS**

44. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
45. The hours of operation of the restaurant portion of the business shall be limited to **8:00 AM to midnight, Sunday through Thursday**, and **8:00 AM to 2:00 AM Friday and Saturday**. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation shall be approved by the Zoning Adjustments Board. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

46. The applicant shall not rent out the premises to other persons or entities for the purpose of holding special events or parties open to the public.
47. Cooking odors, noise, exterior lighting and/or operation of any parking area 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 or after patrons leave.
48. Garbage and trash containers located outside of the building shall be suitably enclosed and screened from view, subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner.
49. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity.
50. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
51. Consistent with BMC Chapter 9.88, employers for which an average of ten (10) or more persons per week perform work for compensation shall provide one of three specified transit benefits to covered employees. Contact the City's Transportation Division for further information.
52. The applicant shall provide notice of the location and availability of parking spaces for restaurant customers.