



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 #2013-0100

Property Address: **1698 UNIVERSITY AVENUE**

Permittee Name: **MIKE BORIS/DELANCEY STREET
FOUNDATION**

Use and/or Construction Permitted: to establish a temporary use in the form of Christmas tree sales from November 29, 2013 through December 24, 2013 with hours of operation from 8:00 a.m. to 10:00 p.m. weekdays and 9:00 a.m. to 10:00 p.m. weekends pursuant to:

- Section 23B.40.030 to establish a temporary use (Christmas tree lot).

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 September 27, 2013.

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

Sept. 27, 2013
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 12, 2013

1698 University Avenue

Administrative Use Permit 2013-0100

To establish a temporary use in the form of Christmas tree sales from November 29, 2013 through December 24, 2013 with hours of operation from 8:00 a.m. to 10:00 p.m. weekdays and 9:00 a.m. to 10:00 p.m. weekends.

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 15304(e) of the CEQA Guidelines ("Christmas Tree Lots").

FINDINGS FOR APPROVAL

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 of the temporary nature of the retail sales use and the conditions requiring compliance with all other City laws.

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)

- 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:

Prior to Submittal of Any Building Permit

- 10.** 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 written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

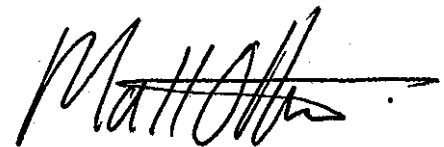
Name: _____ Phone: _____

- 11.** 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.

12. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
13. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **AUGUST 08, 2013**.

At All Times (Operation):

14. The applicant shall comply with all requests from the Traffic Engineer concerning loading, parking, and traffic.
15. Prior to the installation of any sign, banner, or on-site advertisement, sign permits must be obtained and prior approval of the Design Review Planner secured.
16. The hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. weekdays and 9:00 a.m. to 10:00 p.m. on weekends.
17. The residue from all operations shall be removed from the site no later than January 7, 2014.
18. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
19. Noise, music, 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.
20. 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.



Prepared by: Matt Ottoson, Land Use
Planner/ZAB Intern for Debra
Sanderson, Zoning Officer

RECEIVED

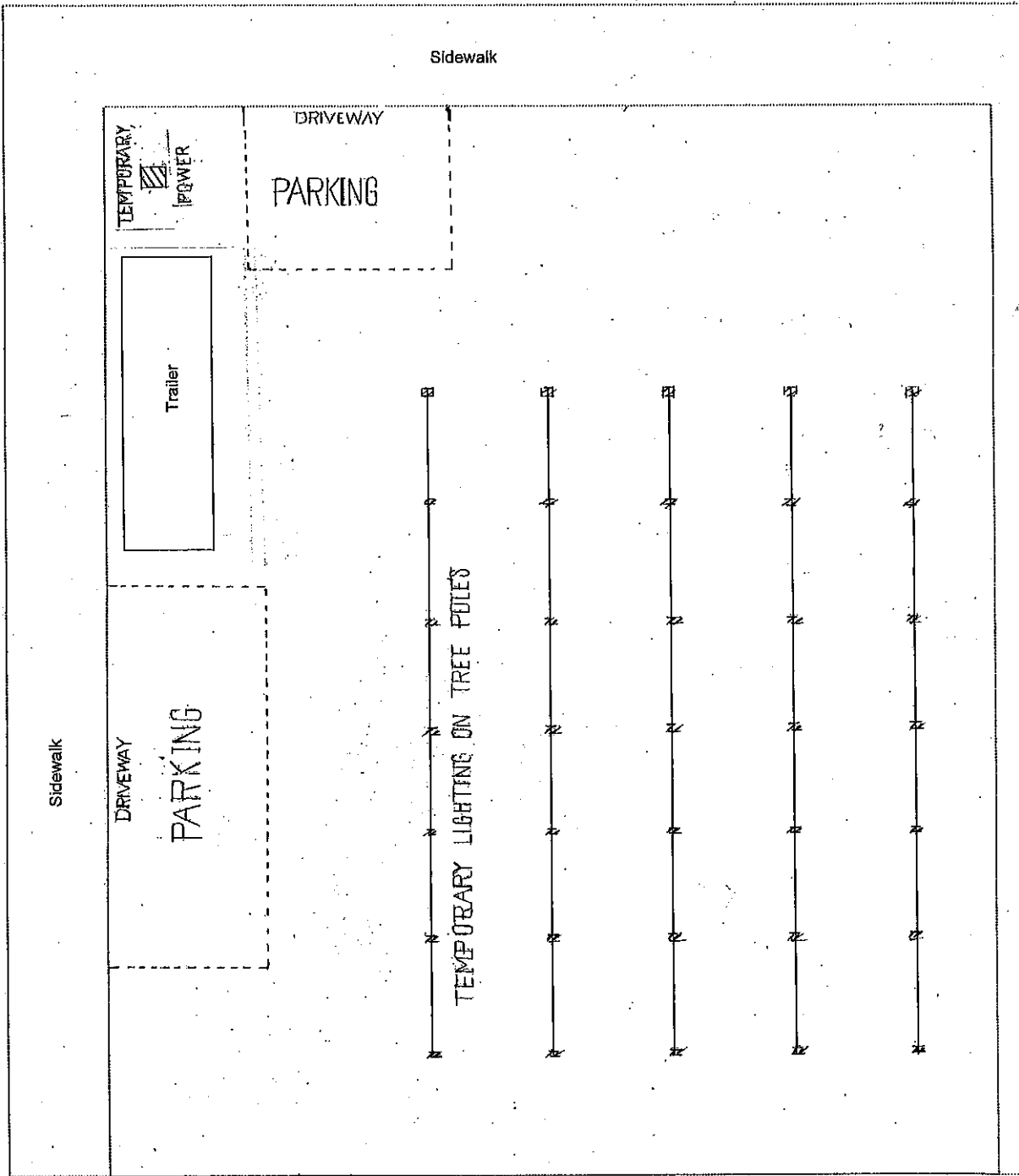
AUG 08 2013

LAND USE PLANNING



McGee Ave

University Ave



APPROVED PLAN	05/11/13
PLANNING	DATE
<input type="checkbox"/> D.R. Conditions Attached	
<input checked="" type="checkbox"/> A.U.P. Conditions Attached	
<input type="checkbox"/> U.P. Conditions Attached	

Scale: 1" = 10'