



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 #2013-0118

Property Address: **1201 SAN PABLO AVENUE**

Permittee Name: **BRENT & FRANK HENNEFER**

Use and/or Construction Permitted: to establish a temporary use in the form of Christmas tree sales from November 22, 2013 through December 31, 2013 with hours of operation from 9:00 a.m. to 9:00 p.m. daily 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 October 30, 2013.

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

October 30, 2013
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 15, 2013

1201 San Pablo Avenue

Administrative Use Permit #2013-0118

To establish a temporary use in the form of Christmas tree sales from November 22, 2013 through December 31, 2013 with hours of operation from 9:00 a.m. to 9:00 p.m. daily.

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 (“Minor Alterations to Land”). As provided under CEQA Guidelines Section 15304(e), the temporary use will not involve significant amounts of hazardous substances, is located in an urbanized area, on a commercial lot, does not exceed 10,000 square feet in floor area and is on a site zoned for commercial uses. The project does not qualify as an exception to this Section for the following reasons:
 - There would be no cumulative impact of successive projects of the same type, in the same place over time that could create a significant environmental impact because the project is located in a fully developed commercial area where new development is limited.
 - There are no unusual circumstances that could lead to a significant impact because the project involves the temporary sale of Christmas trees and does not involve other changes to the property.
 - The project will not cause a substantial adverse change in the significance of a historical resource.
 - The project is not located near a scenic highway or on a property listed as a hazardous waste site.

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.** Prior to submittal 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 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 **SEPTEMBER 16, 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 9:00 a.m. to 9:00 p.m. daily.
17. The residue from all operations shall be removed from the site no later than January 5, 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. 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.
20. 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.



Claudine Asbagh, Assistant Planner for
Debra Sanderson, Zoning Officer