



Planning and Development Department
Land Use Planning

U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code Title 23

USE PERMIT # UP2013-0051

Property Address: **2190 BANCROFT WAY**

Permittee Name: **CHING YU
Great China Restaurant**

Use and/or Construction Permitted:

to expand alcohol service by adding distilled spirits to an existing 5,304 square-foot, 150-seat, full-service restaurant that currently serves beer and wine.

- Use Permit to expand alcohol service, under Berkeley Municipal Code (BMC) sections 23E.16.040 and 23E.68.030

FINDINGS, CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on March 7, 2014.

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 13, 2014

2190 Bancroft Way

Use Permit #2013-0051 to expand alcohol service by adding distilled spirits to an existing 5,304 square-foot, 150-seat full-service restaurant that currently serves beer and wine.

CEQA FINDINGS

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 *Guidelines* Section 15301 for “operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures.” No physical changes are proposed to land or structures, and the type and intensity of use on the site would remain generally similar as under existing conditions with ongoing operation of the existing restaurant, which currently sells beer and wine in addition to food.

GENERAL NON-DETRIMENT FINDING

1. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the addition of incidental service of distilled spirits to a restaurant already serving food, beer and wine, 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 project conforms to the applicable General Plan and Downtown Area Plan policies by encouraging commercial activity, helping to develop a more lively night time environment, and expanding the types of goods and services offered in the area;
 - B. The alcohol service would be incidental to food service and due to the incidental nature of the service, as well as the size, type and location of the restaurant, alcohol sales will not have significant detrimental impact on public health, safety, or peace.
 - C. The permit is subject to conditions to further ensure safety and neighborhood compatibility.

OTHER REQUIRED FINDINGS

2. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that allowing the addition of incidental service of distilled spirits to a restaurant already serving food, beer and wine will be compatible with the purposes of the C-DMU District, which encourages restaurants and other nighttime activity-serving uses, and with the surrounding uses and buildings, which include multi-unit residential and commercial uses in Berkeley’s dynamic Downtown area.

3. Pursuant to Berkeley Municipal Code Section 23E.16.040 addressing sale of Alcoholic Beverages, the Zoning Adjustments Board finds that:
 - A. The expanded alcohol service will promote the City's economic health and will further applicable General Plan and Downtown Area Plan policies, as discussed in the staff report.
 - B. The economic benefits associated with the existing establishment will be enhanced by the proposed alcohol sales, and the economic benefits associated with the establishment could not reasonably be achieved to the same extent without the proposed alcohol sales. Obtaining a Type 47 California Alcohol Beverage Control (ABC) License for full alcoholic beverage service, including with dining and separately, is in keeping with comparable dining experiences located within the area. The applicant has committed financial resources to improving the new location, and the restaurant experience offered, including full alcohol service both at a bar and with meals, will result in a positive customer experience as well as an economic benefit to surrounding businesses and the District.
 - C. The applicant is not known to have operated a licensed establishment which has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations.
 - D. The project location is not located within one thousand (1,000) feet of any public park or Berkeley Unified School District (BUSD) school.
 - E. The Police Department submitted a memorandum dated December 30, 2013, that does not state that the proposed expansion of alcohol service is expected to add substantially to crime in the area.

STANDARD CONDITIONS

1. 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.

2. 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 exclude other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

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

No change in the use 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.

4. 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.

5. 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.

6. 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.

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 (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.

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

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

9. Hours of operation and other operational conditions of approval remain the same as currently in effect, as detailed in Use Permit Modification #12-70000011 approved by the Zoning Adjustments Board on September 27, 2012.

Prior to Occupancy Permit or Final Inspection

10. The project shall conform to the plans and statements in the Use Permit.
11. The owner or operator of the establishment shall participate in the local Business/Merchant Association to develop a working relationship with the Berkeley Police Department, and shall submit copies of correspondence demonstrating such participation within 30 days of the granting of this permit. The owner or operator is also strongly encouraged to develop a working relationship with the Berkeley Police Department Area 3 Coordinator and the beat officers to address issues pertaining to the neighborhood and the surrounding business areas.
12. The owner or operator of the establishment shall complete a CPTED (Crime Prevention through Environmental Design) survey, which can be requested via the Berkeley Police Department. The survey will address safety concerns including but not limited to; lighting, alarm and security systems, perimeter safety, and employee/patron personal safety options. The owner or operator shall submit copies of correspondence or paperwork demonstrating compliance with this condition within 30 days of the granting of this permit.
13. The owner or operator of the establishment shall not allow a third-party promoter to rent the facility in a manner not consistent with local laws.
14. The owner or operator of the establishment shall assume reasonable responsibility for ensuring that patrons do not cause disturbance outside the premises. Patrons shall be reminded by signs, or other printed means, of the proximity of residential uses and requested not to congregate or linger near such uses, nor operate vehicles in a noisy manner on residential streets. Proprietors shall give surveillance to public areas near their premises, maintain such areas in a clean condition free of trash and litter, provide lighting, and otherwise attempt to inhibit conduct that might disturb the peace and quiet of residential uses in the vicinity.
15. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.

16. 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.
17. 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.
18. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
19. Employees shall not serve alcohol to patrons who appear to be Inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
20. The permittee and all employees selling or serving alcohol, or directly supervising such sales or service, shall complete a course through 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.
21. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
22. 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. 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;
 - C. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
 - 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. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
23. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours of food or alcohol service, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.