

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 # MODUP2014-0008

Property Address: **2230 SHATTUCK AVENUE**

Permittee Name: **PATHOS MANAGEMENT GROUP, LLC**

Use and/or Construction Permitted:

Modify Use Permit #08-10000116 that established alcohol consumption in two theater auditoriums. The application seeks to expand alcohol consumption to all theaters and modify conditions related this operation.

- Use Permit to allow the incidental sale of distilled spirits in a full service restaurant, under BMC Sections 23E.16.040 & 23E.68.030.

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 December 8, 2014.

ATTACHMENT 1

FINDINGS AND CONDITIONS

NOVEMBER 13, 2014

2230 Shattuck Avenue

Use Permit Modification #2014-0008 of Use Permit #08-10000116 that established alcohol consumption in two theater auditoriums. This use permit modification allows the expansion of alcohol consumption to all theaters and the modification to the conditions related to the service of alcohol.

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 15301 of the CEQA Guidelines (“Existing Facilities”).

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the alcohol consumption in all theater auditoriums, 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 expansion of alcoholic beverage service from four theaters to ten theaters will encourage continued patronage of a cultural use compatible and complimentary to the other cultural and restaurant activities offered in the downtown area.
 - B. The alcohol service would be incidental to food service and due to the incidental nature of the service, as well as the conditions imposed by the ABC and this permit, alcohol sales will not have significant detrimental impact on public health, safety, or peace.
 - C. The project supports the following 2002 General Plan Policies as further discussed below.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that the expansion of incidental alcohol service to all auditoriums in an existing movie theater is permissible because the use is consistent with the purposes of the District in that:
 - A. The project supports the retention of a cultural use, the theatre complex, showing sophisticated, independent films and enhancing its attraction to patrons by creating an immediately accessible upscale restaurant with the theatres; along with the contemporary modification to the operations, by allowing food and alcohol consumption in certain of the auditoriums; and
 - B. The project would not impair the significance of the Landmark building because no exterior changes are proposed.

4. Pursuant to Berkeley Municipal Code Section 23E.16.040 addressing sale of Alcoholic Beverages, the Zoning Adjustments Board finds that:
- A. The proposed will promote the City's economic health in that it will allow the Shattuck Cinemas to continue to provide patrons with a unique cinema experience, and complement the existing cultural activities and food choices that are already available.
 - B. The economic benefits associated with the establishment are enhanced by the proposed alcohol sales. To be economically viable, cinemas depend heavily on the profit from concessions. The addition, or in this case expansion, of alcohol service will help sustain the enterprise and allow the theatres to remain competitive with other, similar theaters in nearby cities.
 - C. Landmarks Theatres/Shattuck Cinemas has not operated a licensed establishment that has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations.
 - D. The proposed establishment is located within 1,000 feet of Berkeley High School and approximately 950 feet from MLK Jr. Civic Center Park. There are five other similarly licensed establishments within a 1,000-foot radius of these public spaces. Given the Shattuck Cinema's history as a good neighbor and one that provides a unique cultural experience for the community, Staff does not anticipate any detrimental effects on the students or park users. Additionally the proposed establishment is not an alcohol retailer or bar, no visible advertising is allowed and the business staff will check customers for proper identification to purchase alcohol with meals.
 - E. The Police Department has reviewed the application and believes that the proposal would not be expected to add to crime in the area.
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STANDARD CONDITIONS

- 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 exclude 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 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.
- 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.

ADDITIONAL CONDITIONS

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

At All Times:

- 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.

Food and Alcohol Service Conditions:

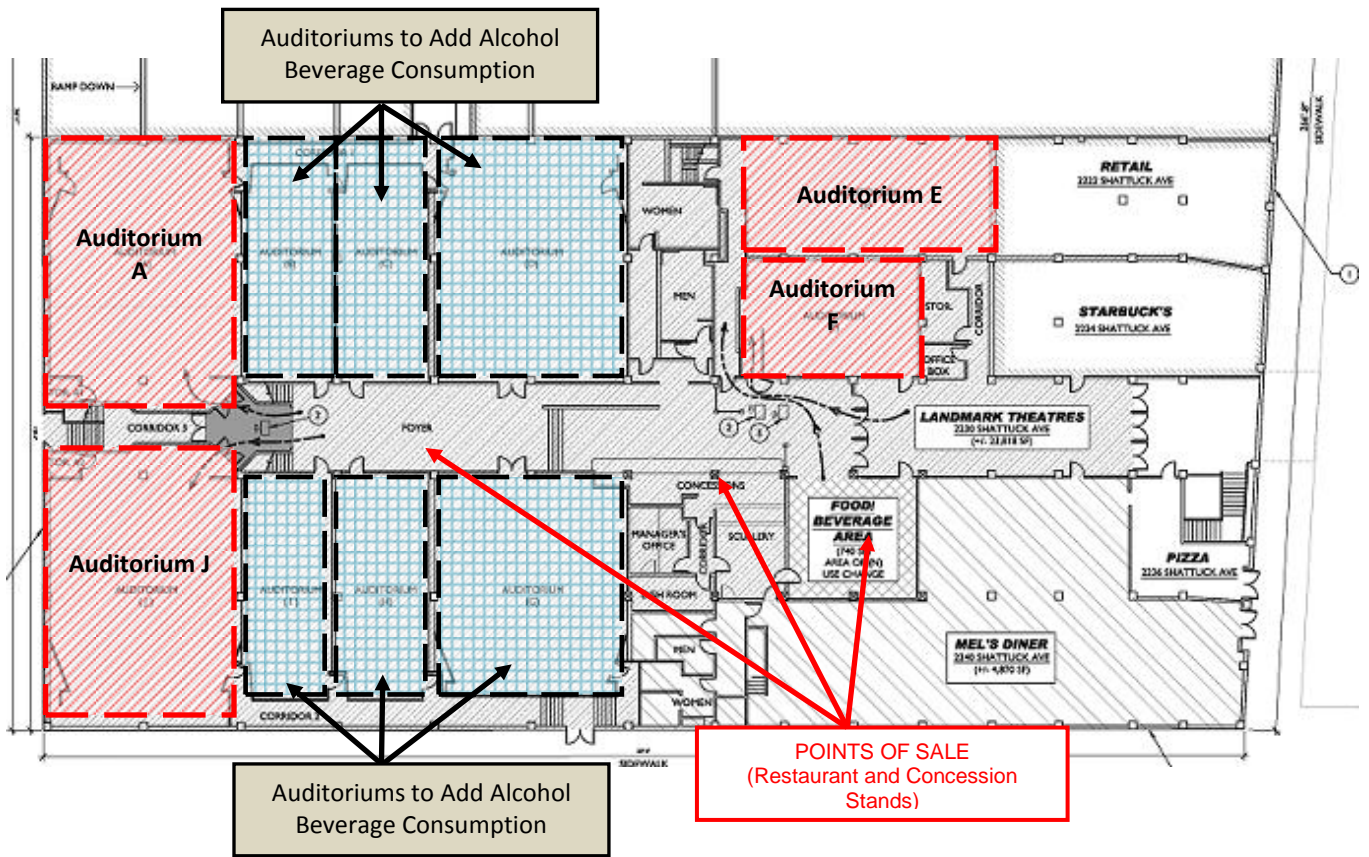
- 10. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, 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.
- 11. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
- 12. The approved floor plan, including the number of seats (21 for restaurant, 924 total for auditorium seating), shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
- 13. The hours of operation of the restaurant shall be limited to between noon and 2:00 a.m. daily. Hours of operation of the theatres shall remain 10:00 a.m. to 2:00 a.m. daily. Hours of alcohol beverage service to theaters patrons shall cease at 11:00 p.m. 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. Hours of operation refer to arrival of the first patron and departure of the last patron.


14. Cooking odors, noise, exterior lighting and 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.
15. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to nearby residential uses of the restaurant shall be installed prior to issuance of an Occupancy Permit.
16. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Landmarks Preservation Commission. 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 to ensure recycling of such containers.
17. 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.
18. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
19. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure 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.
20. 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.
21. 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.
22. Pursuant to BMC Section 23F.04.010, alcohol sales “may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary (food service) use.” In addition, the California Department of Alcohol Beverage Control (ABC) allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
23. No sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.

24. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
25. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete a course in Responsible Beverage Sales and Service (RBSS) through 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.
26. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to opening the restaurant.
27. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
28. 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. In addition, 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 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 that are clearly visible to the exterior shall constitute a violation of this condition.
 - D. No more than one (1) alcoholic beverage shall be sold or served to any one (1) person during any sales transaction.
 - E. Alcoholic beverages shall be served in containers that will significantly differ in appearance from those containers utilized for non-alcoholic beverages. Containers for beers shall not exceed 16 ounces.
 - F. At all times that alcoholic beverage sales and consumption is available to the general public in the auditoriums all access to the auditoriums shall be restricted to patrons who have purchased a ticket.
 - G. In the case of a private function, there shall be no involvement by outside for-profit promoters, the events shall not be advertised to or open for attendance by the general public, and there shall be no ticket sales or donations accepted at the door at the time of the event.
 - H. Persons ordering alcoholic beverages must show valid identification at the time of placing order with servers.
 - I. All sales of alcoholic beverages shall not be made within in any theater auditorium, nor shall it be served or delivered to customers within the theater auditorium by individual ambulatory vendors, more commonly known as "hawkers."

- J. At all times when the premises is exercising the privileges of their license, an employee of the premises shall enter and monitor the activity within the theaters on a regular basis, but no less than once every 30 minutes.
- 29.** 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.
- 30.** There shall be no service or consumption of alcohol on the public right-of-way.
- 31.** Sales, service and consumption of alcoholic beverages shall be confined to the areas outlined and depicted on the plans submitted to the City as part of their use permit.
- 32.** The boundaries and entrances to Auditoriums while serving Alcoholic Beverages shall not be changed without first notifying, and securing the approval, of the City.
- 33.** The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premise.
- 34.** The petitioner(s) shall be responsible for maintaining free of litter the areas adjacent to the premises over which they have control, as depicted on the plans submitted to the city.
- 35.** The petitioner shall post signs, measuring no less that 12 by 12 inches with lettering no smaller than two inches in height, which reads, "No Alcoholic Beverages beyond this point" at all premises exits.
- 36.** During the period from the initiation of seating until the commencement of the feature presentation (which interval shall not be shorter than 10 minutes), ambient light in the designated auditorium(s) shall remain at a level sufficient to allow a reasonable person to observe patrons who may be consuming alcoholic beverages
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Theater Floor Plan (Existing and Proposed Conditions)



 Auditoriums with Existing Alcohol Beverage Consumption (Auditoriums A, E, F, & J)

 Auditoriums to Add Alcohol Beverage Consumption

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD



SIGNATURE

November 13, 2014

DATE

* Findings and Conditions Attached