



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 # AUP2013-0166

Property Address: **2701 EIGHTH STREET**

Permittee Name: **JONAH HENDRICKSON**

Use and/or Construction Permitted:  
to establish incidental retail sales of products manufactured on-site and incidental carry out food service at existing light industrial commercial kitchens.

- Administrative Use Permits to establish incidental retail sales and carry out food service, under BMC Section 23E.84.020 for Uses Permitted in the MU-R

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 February 3, 2015.

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

DECEMBER 11, 2014

### 2701 Eighth Street

#### Administrative Use Permit #AUP2013-0166

**To establish incidental retail sales of products manufactured on-site and incidental carry out food service in existing commercial kitchens occupying Units #114 and 118.**

#### 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 15303 (c) of the CEQA Guidelines (“Conversion of Small Structures”). 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.

#### FINDINGS FOR APPROVAL

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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 for the following reasons:

- As incidental uses, the retail sales and carry out food service are significantly limited in their scope by the regulations of the Zoning Ordinance and will be further limited by Condition of Approval #15 that restricts hours of operation to specific times of day. These combined limitations will help ensure that light manufacturing remains the predominant activity in the affected tenancies and that the new incidental uses remain secondary to, and supportive of, the primary use. Under these circumstances, the proposed establishment of these incidental uses is found to be generally supportive of the continuation of existing light manufacturing uses on the site and in the vicinity.
- Similarly, the restricted operating hours are found to be an effective measure in significantly limiting potential impacts from increased commercial activity and customer visits in this neighborhood, and ensuring that the character of the uses on the site remains predominantly light industrial rather than commercial.

- This proposal adheres to all Use Limitations for Incidental Retail Sales in the Mixed Use Residential (MU-R) zoning district prescribed under Section 23E.84.060. Specifically the permitted floor area devoted to retail sales within each affected tenancy does not exceed 10% of the total floor area of the unit, the size and design of all signage is subject to the limitations of Condition #18 as well as separate Design Review permit approval, and all outdoor sales are prohibited (see Condition #20).
3. As required under Section 23E.84.090 (Findings) Paragraph B.1, the proposed incidental uses are consistent with the Purposes of the MU-R district (23E.84.020) as described below.

*“A. Implement the West Berkeley Plan’s designation of a Mixed Residential District.”*

- The directive to codify the West Berkeley Plan does not apply to the proposed project. However, as discussed herein, the project is consistent with all applicable regulations and findings of the MU-R District to which this Purpose refers.

*“B. Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.”*

- This proposal will seamlessly combine uses and functions within existing tenancies, will expand the uses and services already available in this area, and will provide new products and services to employees, residents and visitors in the neighborhood. As discussed elsewhere in these findings, this permit includes adequate restrictions to ensure that the proposed incidental retail and food service uses do not substantially alter the existing light industrial use of the site or other industrial uses in the vicinity. For these reasons it is found to further the development of this mixed use District.

*“C. Strengthen residential concentrations which exist within the District.”*

*“D. Provide appropriate locations for a broad range of live/work activities to occur.”*

*“E. Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.”*

- The directives of items C – E above do not apply to the proposed project.

*“F. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district.”*

- The subject manufacturers already exist and their lawful operation does not conflict with surrounding uses. This entitlement will encourage the continued viability of these manufacturers, consistent with this Purpose.

*“G. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.”*

- This proposal does not present an opportunity to support the development of the kind of businesses described in this directive.

*“H. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed use West Berkeley context.”*

- This permit is subject to special Conditions of Approval to ensure that the hours of operation are limited and that potential smoke and odors are directed away from the residential property to the immediate south (see Conditions of Approval #12, 21, 22 and 27). Condition #13 specifically reiterates the MU-R district deliveries hours so that the surrounding neighborhood is not unduly impacted by these kinds of disturbances.

*“I. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.”*

- As discussed previously, the regulatory restrictions for incidental uses combined with the additional limitation on the hours of operation for the proposed commercial uses at this site are designed to protect the existing light manufacturing uses on the site and in the vicinity from potential intrusions on their ability to operate lawfully and effectively. In addition, these limitations ensure that the proposed commercial activity will not become the primary use of this site and induce a change away from the existing light manufacturing activities.

*“J. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the District, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the District. (Ord. 6478-NS § 4 (part), 1999)”*

- This permit will establish incidental retail sales and carry out food services that are ancillary to primary light manufacturing uses which are permitted and already established at this location. These expanded services have the potential to make the existing uses more economically viable, thereby responding directly to this imperative.

In summary, this proposal is not inconsistent with all applicable Purposes of the MU-R District, and it will not preclude or impair the continuation of the existing land uses in the immediate area or the District.

4. As required under Section 23E.84.090 (Findings) Paragraphs B.2 through B.6, the Zoning Officer makes the following findings for the proposed incidental uses:

Paragraph B.2 – *“Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings.”*

- Given their limitations as incidental uses, the restriction on their operating hours and their location within the existing tenancies, these uses are not expected to interfere with the normal use and operation of other uses, buildings or business in the area. They are found to be consistent with the surrounding uses.

Paragraph B.3 – *“Be consistent with the adopted West Berkeley Plan.”*

- This proposal is consistent with the West Berkeley Plan (WBP) Land Use Policy 1.B (page 34) which calls upon the City, “[to provide], through zoning districts, development standards, and other tools, space and incentives for expansion of manufacturing firms, particularly the growing light manufacturing sector.”

Food production is a growing and popular segment of Berkeley’s light manufacturing sector. This proposal reflects this fact while complying with the City’s regulatory standards to protect existing industrial uses, and integrating multiple, supportive functions within the subject facility.

- This proposal is also consistent with the Spectrum of Permitted Uses for this mixed uses/ residential neighborhood as described in the WBP’s Land Use Implementation Measures and Regulations (page 38). Specifically this proposal integrates land uses that have similar discretionary thresholds and policy preferences in this Plan subarea.
- This proposal is not contrary to, or inconsistent with, any of the policies of the Plan.

Paragraph B.4 – *“Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses.”*

- These tenancies have been designed to create an environment that is sensitive to artisanal food production. In this way the design encourages a unique kind of light manufacturing activity while supporting industrial activity in general. The introduction of only two limited retail and carry out food uses within this context is not expected to encourage a shift away from light manufacturing and toward commercial activity because the primary use of these spaces will remain light manufacturing. This change is found to be appropriate and compatible for this predominantly light manufacturing site, and to have the potential to make these uses more economically viable.
- See Findings #3 for Purposes of the District, Item I, above.

Paragraph B.5 – *“Be designed in such a manner to be supportive of the character and purposes of the District.”*

- The character of this District reflects the variety of uses present and their ability to coexist in this unique context. The project area features commercial, light industrial, office, educational, residential, live/work and food service uses. This proposal will join several of these uses within a single site, forming a microcosm of the neighborhood, serving its users and continuing the diversity that characterizes the District as a whole, while limiting new retail and food service uses in order to preserve existing industrial uses on the site and in the vicinity.
- This proposal supports other Purposes of the MU-R District as discussed in Findings #3, above.

Paragraph B.6 – *“Be able to meet any applicable performance standards as described in Section 23E.84.070.H.”*

- The City Manager has not promulgated or revised performance standards for the subject uses.
5. As required under Section 23E.84.090 Paragraph F, the proposed establishment of incidental carry out food services in two of the existing commercial kitchens is permissible because all of the food served at these establishments will be produced on site. Given the regulatory limitations and operating restrictions previously described as well as their confinement within the subject tenancies, these carry out food services would not have a significantly detrimental impact on the industrial or residential character of the area.

## STANDARD CONDITIONS

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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:

### **At All Times (Operation):**

10. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
11. 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.
12. Noise 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.
13. **DELIVERIES.** In accordance with BMC Section 23E.16.010 Paragraph C (Hours of Operation), deliveries for the light manufacturing commercial kitchens shall be limited to the Hours of Operation for the MU-R district, currently 6 a.m. to 10 p.m.
14. **TRANSIT INFORMATION BOARD.** The property owner shall install and maintain a transit information board in the common area of this building. This board shall include transit routes and schedules for all nearby public and private providers.

### **Special Conditions for Incidental Retail Sales and Carry Out Food Service**

**15. HOURS OF OPERATION.** The commercial kitchens may operate within the hours permitted by the District, currently 6AM to 10PM daily. However the hours of operation for the incidental retail sales and carry out food service shall be limited as follows:

- Suite 114 - bakery  
Wednesday: noon to 4 p.m.  
Thursday: 8 a.m. to noon
- Suite 118 – caterer  
10 a.m. to 2 p.m. and 4 p.m. to 8:30 p.m., daily

For these incidental uses, 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 Officer. Furthermore, hours of operation are subject to review and amendment by the Zoning Officer as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

**16. LIMITATION ON GROSS RECEIPTS.** The gross receipts for the incidental retail sales and carry out food service portions of these commercial kitchens shall not exceed 33% of the total gross sales of the primary light manufacturing/wholesale activities business.

**17. MAXIMUM FLOOR AREA.** The floor plans for the subject tenancies shall substantially adhere to the approved floors plans for this permit. The floor area devoted to carry out food service shall not exceed 25% of the total Gross Floor Area of subject tenancies; within that 25% of designated floor area, not more than the equivalent of 10% of the total gross floor area shall be used for incidental retail sales.

**18.** Signage is subject to approval under separate permit in accordance with the requirements of the Zoning Ordinance and adopted Design Review Guidelines. Signage shall emphasize the primary light manufacturing use of the commercial kitchens and represent the incidental uses in a diminutive manner, if at all.

**19.** No seating shall be provided for incidental carry out food service.

**20.** No sales or food service shall occur outdoors.

**21.** Cooking odors, noise 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.

**22.** Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the subject uses shall be installed prior to issuance of an Occupancy Permit.

23. 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 Design Review Planner. 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.
24. 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.
25. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
26. The operator 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.
27. 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.
28. Operators shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.

