

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 # ZP2015-0108

Property Address: **2116 SHATTUCK AVENUE**

Permittee Name: **ABRAHAM MASARWEH**

Use and/or Construction Permitted:
to Allow Sale of Beer, Wine and Distilled Spirits Incidental to Food Service and Modify Hours of Operation for an Existing Quick-Service Restaurant.

- Use Permit to serve beer, wine and distilled spirits incidental to food service, per BMC Sections 23E.16.040.A. and 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 September 23, 2015.

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 27, 2015

2116 Shattuck Avenue

Use Permit #ZP2015-0108 to Allow Sale of Beer, Wine and Distilled Spirits Incidental to Food Service and Modify Hours of Operation for an Existing Quick-Service Restaurant

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”). 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.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed project, 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 change in hours of operation and the establishment of incidental service of beer, wine and distilled spirits would encourage commercial activity, helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses by expanding the types of goods and services offered in the area.
 - C. The alcohol service would be incidental to food service and due to the secondary nature of the service, as well as the size and location of the restaurant, alcohol sales would not have significant detrimental impact on public health, safety, or peace.
 - D. The permit is subject to the standard conditions for food and alcohol service, which would ensure that the quick service restaurant tenant is a good neighbor.

Additional conditions including prohibiting any music in the outdoor patio, and prohibiting rental to a third party promoter are further measures to limit detriment to the surrounding neighborhood.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that allowing the sale of beer, wine and distilled spirits to an existing quick service restaurant is permissible because:
 - A. The proposed use is consistent with the purposes of the District in that:
 1. The quick service restaurant 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.
 2. The quick service restaurant is commercial in nature and thus helps to implement the General Plan and Downtown Area Plan's designation of Core Area. The addition of the alcohol service for a quick service restaurant would provide a diversity of dining options in the area.
 3. The proposed addition of alcohol services would intensify the use of the existing restaurant and would further encourage commercial activity, helping to develop a more pedestrian-oriented environment that is compatible with nearby residences and commercial uses in the District.
 - B. The permit is conditioned to include measures to mitigate potential impacts associated with incidental service of beer, wine and distilled spirits and is, therefore, expected to meet applicable performance standards for potential off-site impacts.
 - C. The use is not expected to substantially reduce the availability of on-street parking in the vicinity and the restaurant's busiest hours of operation (evening) off-set parking demand from many of the adjacent institutional and commercial uses.
4. Pursuant to Berkeley Municipal Code Section 23E.16.040 addressing sale of distilled spirits incidental to food service, the Zoning Adjustments Board finds that the request is permissible because it meets the required findings of *Public Convenience or Necessity*, as follows:
 - A. *The proposed establishment will promote the City's economic health, contribute to General Plan or Area Plan policies or further District purposes.* The incidental sale of beer, wine and distilled spirits would complement food service to the seated customers and the later hours of operation would provide late night eating options for patrons of evening activities. The project would meet the purposes of retaining a balance of both smaller and larger restaurants that serves area residents as well as a broader clientele. The project also meets the purpose of the designated nodes by intensifying retail, commercial and mixed use activity around major intersections.

- B. *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales.* The proposed addition of sale of beer, wine and distilled spirits are expected to increase revenue and the profit margin. Increased business revenue would result in increased tax revenue for the City as well as provide reasonable assurance that the restaurant would stay in business.
- C. *The applicant 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.* The Police Area Coordinator reports that during its eight (8) months in operation, the Police have received no disturbance, civil and/or criminal complaints against Burritos Inc. (see Attachment 3 for Police Department Memo). Staff believes this finding can be made. In addition, the applicant operates seven other locations of this establishment throughout the State, all of which have Type 47 California Alcohol Beverage Control (ABC) licenses, and none of these establishments have been subject to verified complaints or violations regarding alcohol, public safety, or other nuisances.
- D. *If the proposed establishment is located within one thousand (1,000) feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.* Martin Luther King Jr. Civic Center Park, Berkeley High School, and the University of California Campus fall within a 1,000-foot radius of the subject site. Staff does not anticipate the incidental service of beer, wine and distilled spirit sales to cause detrimental effects to these public uses. Alcohol would be served incidental to meals, and no signs to advertise ~~advertize~~ the sales or consumption of alcohol will be visible from the public right of way.
- E. *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.* As stated above, the Police Department has reported that in the eight months the applicant operated the restaurant, there have been no disturbances, civil complaints and/or criminal complaints. The Police Department does not foresee any significant rise in criminal activity associated with the proposed project.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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 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. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. The conditions of approval for the existing food service establishment (AUP No. 06-70000022) shall apply to the operation of the restaurant, except that the hours of operation shall be limited from 6:00 a.m. until 11:00 p.m., and the conditions of approval for alcohol services (conditions no. 18-26) heretofore shall apply to the operation of the restaurant.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

12. Alcoholic beverage service shall be “incidental” to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary 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.

13. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
14. 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:
 - The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
 - 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;
 - 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;
 - 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.
15. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
16. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete 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.
17. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
18. 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.
19. The service of alcohol shall be limited to ~~the hours of 11:00 a.m. to 11:00 p.m. restaurant service hours~~; patrons may only purchase food or finish drinks already

purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). 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.

20. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
21. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
22. 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.
23. There shall be no service or consumption of alcohol on the public right-of-way.
24. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
25. 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. Furthermore, 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.
26. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. At no time shall the operator rent the restaurant space to a third-party promoter.
29. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
30. 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.

BURRITOS INC.
2116 SHATTUCK AVENUE
BERKELEY, CA 94704
PHN: 510-529-4888
EMAIL: CONTACTUS@BURRITOSINC.COM

PROPRIETORS:
ABRAHAM MASARWEH, 415.412.9663
JULIA JOSLYN, 707.477.8788

May 6, 2015

Dear City of Berkeley Planning and Development Department,

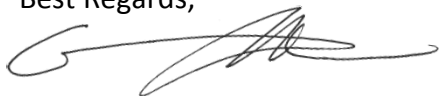
Burritos Inc. is a restaurant located on Shattuck Avenue between Center and Addison in downtown Berkeley. The property address has been zoned as restaurant use for 15+ years and provides service and employment for the community.

In order to conduct continued business at this location, the proprietors are seeking a 47 Liquor License for the premises. The bar would be located at the existing front counter as noted on the enclosed floor plan. Customers will place their order at the front counter and partake of beverages within the grounds of establishment.

The proprietors currently hold a 47 liquor license at their other establishment, Bourbon And Beef, located at 5634 College Avenue in Oakland. License #532973

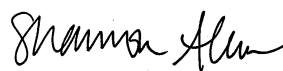
Thank you for your consideration.

Best Regards,



Abraham Masarweh
Proprietor of Burritos Inc. and Bourbon & Beef
415.412.9663

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD



SIGNATURE

August 27, 2015

DATE

* Findings and Conditions Attached

BURRITOS INC.
2116 SHATTUCK AVENUE
BERKELEY, CA 94704
510.529.4888

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Allen

SIGNATURE

August 27, 2015

DATE

* Findings and Conditions Attached

Established Counter Top –
Location for proposed bar

