



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 # ZP2015-0136

Property Address: **2142 CENTER STREET**
Permittee Name: **DAVID DORNAN**
Alborz Persian Restaurant

Use and/or Construction Permitted:
to add incidental service of distilled spirits in addition to beer and wine at an existing full service restaurant with hours of operation from 11:30 a.m. to 12:00 a.m. (midnight) seven days a week.

- Use Permit for incidental service of distilled spirits, under BMC Section 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 November 12, 2015.

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 22, 2015

2142 Center Street

Use Permit ZP2015-0136 to add incidental service of distilled spirits in addition to beer and wine at an existing full service restaurant with hours of operation from 11:30 a.m. to 12:00 a.m. (midnight) seven days a week.

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 later hours of operation, and the establishment of incidental service of distilled spirits in addition to beer and wine will 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.
 - B. The alcohol service would be incidental to food service and due to the incidental 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.
 - C. The permit is subject to the standard conditions for food and alcohol service, which would ensure that the full service restaurant tenant is a good neighbor.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that the a midnight closing time seven days a week and incidental service of distilled spirits in addition to beer and wine at an existing full-service restaurant is permissible because the proposed use is consistent with the purpose of the District to implement the goals of the Downtown Area Plan (adopted 2012) and is compatible with the surrounding uses and buildings. Alborz Restaurant is a locally owned business that

has been in operation on Center Street for the last ten years. The restaurant provides a quality, full service restaurant experience to Downtown clientele, both as a destination as well as a complement to other entertainment or cultural events in the vicinity. The full bar service and late night operations (until midnight) will serve and support night time and weekend activities in the Downtown.

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 proposed project would assist an existing restaurant solidify its business within the Downtown Core. Offering specialty cocktail drinks to pair with the Persian cuisine will allow the restaurant to expand its customer base and ensure the restaurant stays in business. The full service operation contributes to the synergy and vibrancy of the Downtown, thereby contributing to the City's economic health and furthering several of the General Plan (ED-10 – The Downtown Economy) and Downtown Area Plan (LU-1.2.c: Culture & Entertainment, LU-1.3: Complementary & Active Businesses, ED-1.3: Retail, Restaurants & Cultural Uses) policies.
 - b) *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales.* The proposed retail sales of distilled spirits are expected to increase revenue and the profit margin of this independently owned, local business. 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. The economic benefit of a vital local business cannot be achieved through a vacant tenant space.
 - 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.* A license query from the California Department of Alcoholic Beverage Control indicates that the operator has received two violations regarding alcohol in the ten year period that it has been in existence: one in 2009 and one in 2013. Staff believes that two violations, separated by four years over a ten year operation span is not indicative of further violations and/or detrimental impacts from the proposed establishment. In fact, per ABC regulations, as the incidences were separated by a three year period, each was considered a 'first' violation (ABC ACT, Division 9, Chapter 1, Section 25602.3). Additionally, the operator has two other restaurants—one in Walnut Creek and one in San Francisco—with no history of violations. Staff reviewed the violation history with the Police Area Coordinator who stated that the Police received no further complaints after the 2013 incidence and that there is nothing to indicate that granting the Use Permit would impact crime in the area.

- 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.* There are no public parks or K-12 schools, BUSD or private, within a thousand feet of the subject site. This finding is not applicable.
- e) *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.* The Police Department reviewed the proposed project and did not report any history of disturbances, civil complaints and/or criminal complaints associated with the restaurant. The Police 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.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board. **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. 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.

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 SERVICE CONDITIONS

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

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 (except decreased hours in compliance with applicable ABC regulations), and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Adjustments Board.
12. The approved floor plan, including the number of seats, 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. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
14. The hours of operation of the restaurant portion of the business shall be limited to: **11:30 a.m. to 12:00 a.m. seven days a week.** Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation (except decreased hours in compliance with applicable ABC regulations) shall be approved by the Zoning Adjustments Board. 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.
15. 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.
16. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses near the restaurant shall be installed (or prior installation verified) prior to issuance of an Occupancy Permit.
17. 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.

18. 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.
19. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
20. 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.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

21. 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.
22. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
23. 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.

24. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
25. 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.
26. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
27. 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.
28. The service of alcohol shall be limited to 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.
29. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
30. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
31. 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.
32. There shall be no service or consumption of alcohol on the public right-of-way.
33. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
34. 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.

- 35.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 36.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 37.** At no time shall the operator rent the restaurant space to a third-party promoter.
- 38.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
- 39.** 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.