



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 # ZP2015-0203

Property Address: **2055 CENTER STREET**

Permittee Name: **MARK MORRISSETTE
BERKELEY REPERTORY THEATRE**

Use and/or Construction Permitted:
to permit on-site service of alcoholic beverages before, during, and after theatrical performances in the Osher Studio and Studios A and B.

- Use Permit, per Section 23E.16.040 to commence the sales and service of alcoholic beverages; and
- Use Permit, per Section 23E.68.030, to allow on-site service of alcoholic beverages.

FINDINGS, CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on February 19, 2016.

ATTACHMENT 1

FINDINGS AND CONDITIONS

JANUARY 14, 2016

2055 CENTER STREET

Zoning Permit #2015-0203 to permit on-site service of alcoholic beverages before, during and after theatrical performances in the Osher Studio and Studios A and B.

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 on-site service of alcoholic beverages before, during and after theatrical performances at the Osher Studio and Studios A and B, 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. It will be compatible with the purposes of the C-DMU zoning district in that allowing the sales of alcoholic beverages at these three performance spaces along the Arts Passage between Addison and Center Streets would support and enhance the use of these venues for an expanding calendar of relatively small, specialized performances, adding to the variety of live theater in the downtown area.
 - B. It will promote the development of arts and culture in Berkeley by providing an enhanced theater-going experience at these three new venues managed by the Berkeley Repertory Theatre, consistent with General Plan Policies LU-19 and ED-11.
 - C. The project would help expand the success of performing arts in the Downtown Area, by providing future theater patrons with a higher quality experience at the Osher Studio and Studios A and B, consistent with the Downtown Plan’s Goal 1 and Policies DT-20 and DT-23.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that that the proposed project would be compatible with the purposes of the District and compatible with the surrounding uses and buildings because it would enhance the theater-going experience for future patrons of performances at the Osher Studio and Studios A and B, while adding to the successful use of these theater spaces, encouraging increased use of the downtown for cultural events and increasing opportunities for evening

and weekend activities in the downtown area. The affected studio spaces were built with the intention of providing additional small-theater spaces adding options to help express and enhance the cultural character of the downtown. Added patron services in conjunction with performances in these spaces would help ensure that they are well utilized and add value to the surrounding uses and building in the Downtown Arts District.

4. Pursuant to Berkeley Municipal Code Section 23E.16.040, the Zoning Adjustments Board finds that the required findings of “public convenience and necessity” can be made, as follows:

a. *“The proposed establishment will promote the City’s economic health, contribute to General Plan or Area Plan or further District purposes.”*

The Board finds that alcohol service in conjunction with other snack and beverage sales at the Osher Studio and Studios A and B will enhance the overall patron experience in conjunction with performances at these three venues, supporting their success and contributing to the economic health and vitality of the downtown area, and more particularly, the Downtown Arts District.

b. *“The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales”*

The Board finds that alcohol sales, in conjunction with other snack and beverage sales, will enhance and expand the theater-going experience for patrons and provide economic benefits for Berkeley Rep, helping to support increased use of these spaces as performance centers with a wider variety of program options.

c. *“The applicant has not operated a licensed establishment which has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations.”*

The Board makes this finding based upon the Berkeley Police Department’s review of the application, which confirms that Berkeley Repertory Theatre has a long-standing history of alcohol service with no prior events of concern.

d. *“If the proposed establishment is located within one thousand (1,000) feet of any public park or Berkeley Unified School District school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.”*

The Board finds that the proposed theater venues are located within 1,000 feet of Civic Center Park and Berkeley High School. The Board also finds that alcohol service in conjunction with theatrical performances at 2055 Center Street would not have any substantial adverse effects on the public use of the Park, or on Berkeley High School.

e. *“The Police Department has reported that the proposed establishment would not be expected to add crime in the area.”*

The Board finds that the Police Department’s review of the application does not indicate that the proposed alcohol service at these performance venues would be expected to add to crime in the area.

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'. Other sheet(s) 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 (unless that is the same size as the plans).

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. 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.

ADDITIONAL CONDITIONS OF APPROVAL

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

10. The existing conditions of approval establishing the subject cultural arts spaces at 2055 Center Street as set forth in Use Permits #03-10000002 and #07-70000008 shall remain in effect, as shall the terms of the existing lease agreement between the property owner and Berkeley Repertory Theater, which was executed pursuant to these previous Use Permits.

Alcoholic Beverage Service Conditions

11. Sales and Service shall only be for alcoholic beverages served pursuant to a Type 64 (Special on-sale general, theater) ABC license holder.
12. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
13. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol sales and service.
14. 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.
15. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
16. 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.

17. There shall be no service or consumption of alcohol on the public right-of-way.
 18. The sale and service of alcohol shall be limited to 1 hour before, during, and 1 hour after the conclusion of scheduled theatrical performances, and in no event shall alcoholic beverages be sold outside of the hours of 9:00 a.m. – 12:00 a.m. Monday through Friday and 7:00 a.m. to 1:00 a.m. on Saturday and Sunday. The Zoning Adjustments Board or designee shall approve any change in the hours of alcohol service occurring before 9:00 a.m. or after midnight, as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
 19. The sale and service of alcohol under this permit shall be limited to theatrical performances managed and conducted by the Berkeley Repertory Theater. This permit is not transferable to other cultural organizations, persons or entities renting these spaces as allowed pursuant to Use Permits #03-10000002 and #07-70000008.
 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. 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.
 21. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 22. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
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