



Z O N I N G
A D J U S T M E N T S
B O A R D
M E M O R A N D U M

FOR BOARD ACTION
MAY 11, 2023

2966 College Avenue – Elmwood Theater

Use Permit #ZP2023-0002 to add the sale of beer and wine for on-site consumption incidental to a movie theater.

RE: Changes to Conditions of Approval related to alcoholic beverage service

Reasons for Change

On May 8, 2023, Staff was contacted by the applicant who expressed that they had concerns about the proposed conditions of approval. After reviewing the concerns with the applicant and with the Zoning Officer, staff believes that the initially recommended conditions noted below are more appropriate for a restaurant and than a movie theater, which does not function primarily as a food service establishment.

Staff recommends the following changes to the Conditions of Approval, noted with strike throughs for removed text and underlining for added language. Condition 10 has been altered because the theater is not primarily a food service establishment. Condition 15 is removed due to its inapplicability to a small theater that does not have dish washing equipment and is not primarily a food service establishment. Condition 24 is modified because movie theaters, out of necessity for financial reasons, must occasionally work with third-party promoters for film festivals, business meetings, and the like.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

10. The ~~Food Service~~ Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
11. Alcoholic beverage service shall be “incidental” to the primary theater use, as defined in Zoning Ordinance 23.502.020. An incidental use shall not exceed 25 percent 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 33 percent of the gross receipts generated by the primary use.

12. The service of alcohol shall be limited to normal business hours (per ABC). 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 theater 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.
13. The sale of alcoholic beverages for consumption off the premises is prohibited.
14. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
- ~~15. All alcoholic beverages served to patrons must be served in durable restaurant tableware (i.e. cups or glasses). No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container.~~
16. 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.
17. 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. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
18. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
19. 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 six months of employment at the establishment. Employees who have completed the course within the last five years shall be exempt from this requirement.
20. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
21. 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.
22. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.

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23. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 24. At no time shall the operator rent the theater space to a third-party promoter for purposes of using it as a live performance space. The space can be rented out for film festivals, business meetings, and the like.
 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. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 27. 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.
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May 10, 2023

Berkeley Zoning Adjustments Board
Berkeley City Council

Ref: May 11, 2023, ZAP agenda

Item #3 - Elmwood Theater Beer & Wine use permit.

Use Permit #ZP2023-0002

The Claremont Elmwood Neighborhood Association (CENA) Board of Directors supports the Elmwood Theater's application for a Use Permit to add beer and wine to their operating permit. The Elmwood Theater has been an anchor in the Elmwood Shopping District and was saved many years ago by the neighborhoods around it.

As the only movie theater still in operation in Berkeley, CENA believes helping it to remain open to the public is a must. The operators of the theater are doing all that they can to stay open and they hope the plan to sell beer and wine will allow them to do so.

CENA Board of Directors