



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

FOR BOARD ACTION
FEBRUARY 9, 2023

2506 Haste Street

Use Permit ZP2022-0074 to add a Cannabis Consumption Lounge and amplified live music to an existing Cannabis Retail Storefront.

I. Background

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-T-Telegraph Avenue Commercial District

B. Zoning Permits Required:

- Use Permit to establish a lounge in an existing cannabis retailer, under Berkeley Municipal Code (BMC) Section 23.320.020(F); and
- Administrative Use Permit to play amplified music indoors, under BMC Section 23.302.020(D).

C. CEQA Recommendation:

- It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

D. Parties Involved:

- Applicant: David Prinz, 2465 Telegraphy Avenue, Berkeley
- Property Owner: 2506 Haste Partner LLC, 2465 Telegraphy Avenue, Berkeley

Figure 1: Vicinity Map



Figure 2: Site Plan

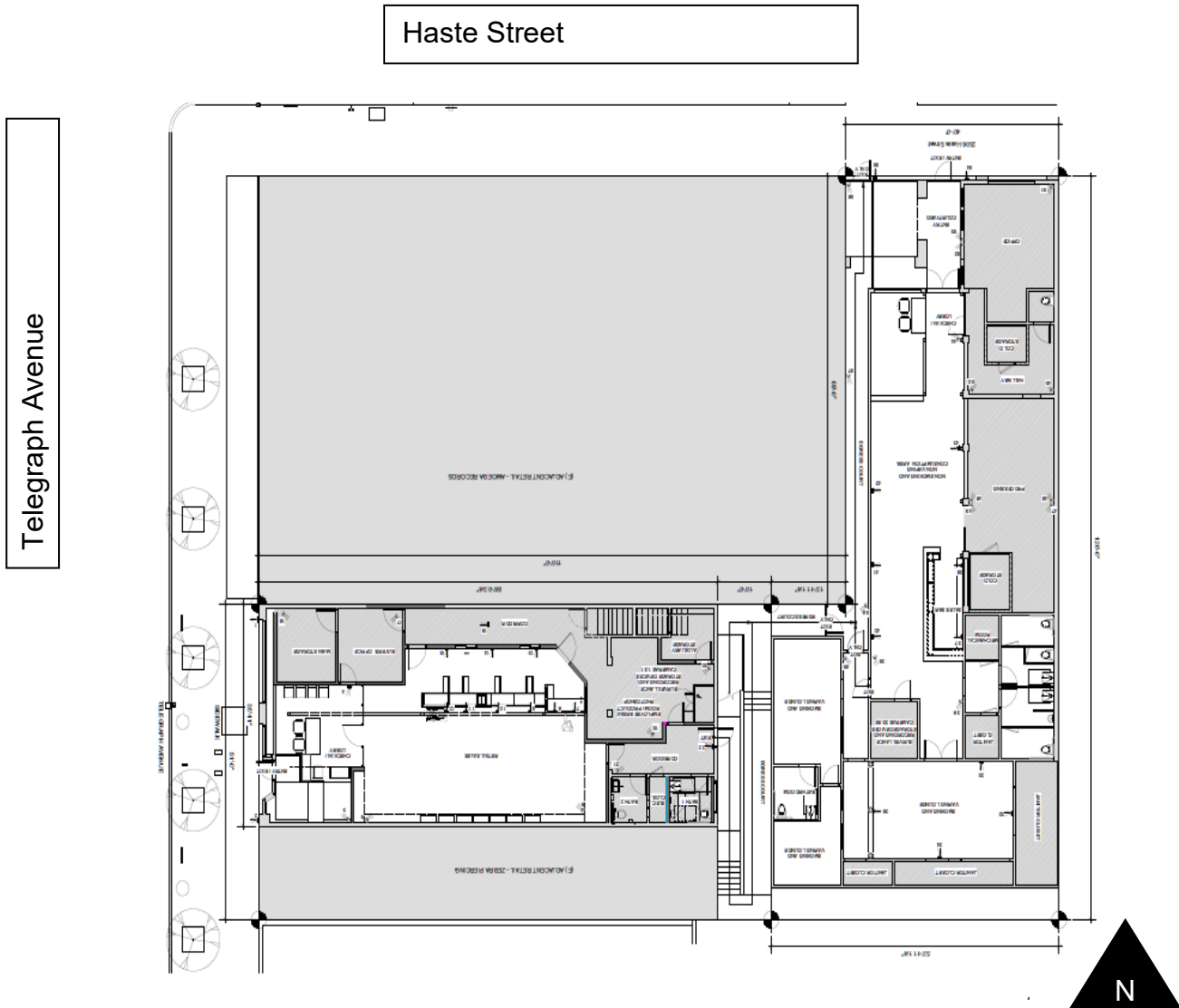


Figure 3: Consumption Lounge Floor Plan

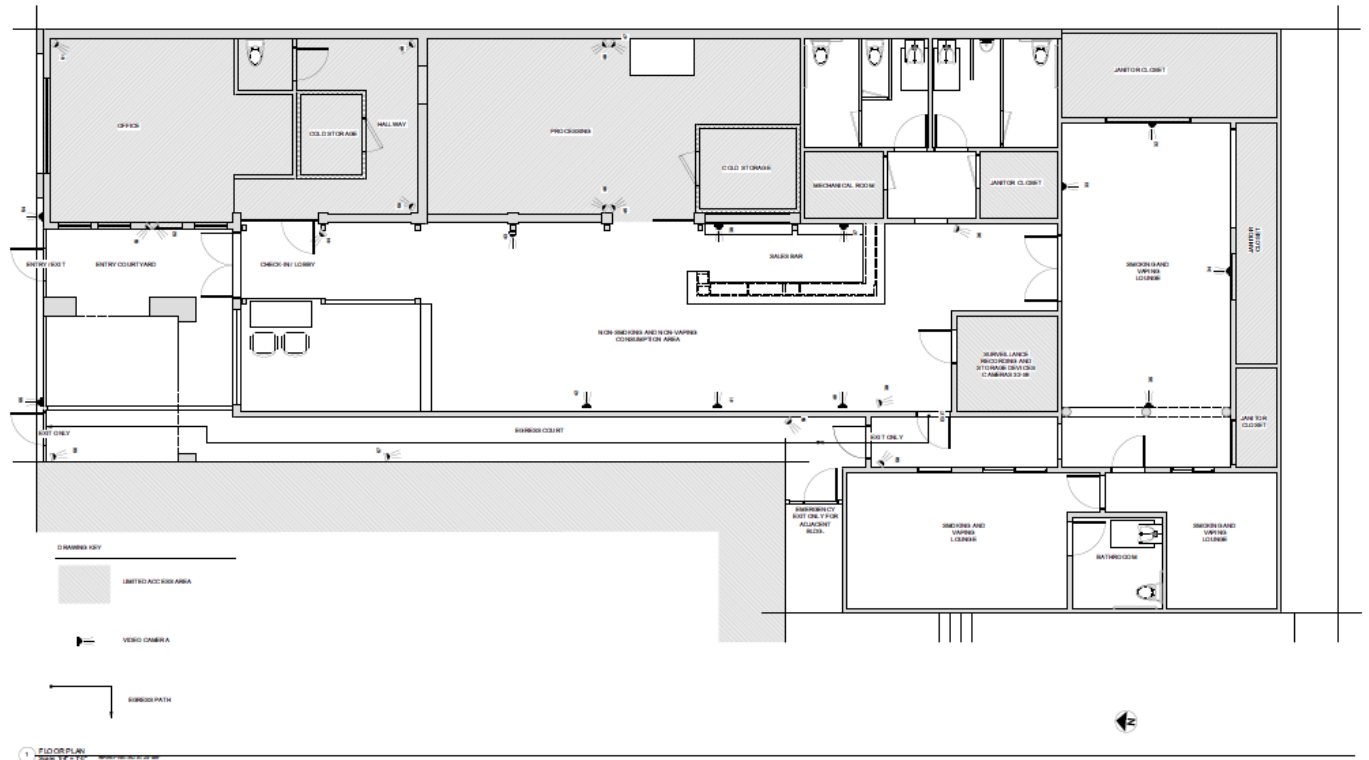


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant	C-T	Avenue Commercial
Surrounding Properties	North	Enclave Apartments		
	South	Multi-Family		
	East	People’s Park	R-3	Medium Density Residential
	West	Zebra Piercing, Hi Fidelity Cannabis	C-T	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project ?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This project would not create new nonresidential gross floor area and is not subject to these provisions.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This project would not create new nonresidential gross floor area and is not subject to these provisions.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This is not a residential project and is not subject to these provisions.
Alcohol Sales/Service	No	The project would establish a cannabis consumption lounge and would not include alcohol sales and/or service.
Creeks	No	There are no creeks within 40 feet of the site.
Density Bonus	No	No residential uses are being proposed.
Housing Accountability Act (Gov’t Code Section 65589.5(j))	No	No residential uses are being proposed; therefore, the Housing Accountability Act does not apply.
Housing Crisis Act of 2019 (SB330)	No	The project is not: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for

		transitional or supportive housing, therefore, SB 330 does not apply
Natural Gas Prohibition (Per BMC 12.80.020)	No	This project would not result in the construction of new buildings; therefore, it is not subject to the natural gas prohibition.
Transit	Yes	There are several local bus lines available within a 0.5-mile radius of the location and the Downtown Berkeley Bay Area Rapid transit station is 1 mile away.

Table 3: Project Chronology

Date	Action
June 2, 2022	Application submitted
June 30, 2022	Application deemed complete
November 22, 2022	Public hearing notices mailed/posted
December 8, 2022	ZAB hearing, project continued to February 9, 2023
January 26, 2022	Public hearing notices mailed/posted
February 9, 2023	ZAB hearing

II. Project Setting

- A. **Neighborhood/Area Description:** 2506 Haste Street east of Telegraph Avenue in the Commercial Telegraph Avenue District. The neighborhood consists primarily of commercial businesses and one to two story multi-family buildings. The project site abuts People's Park to the east and Amoeba Records and Hi Fidelity to the west.
- B. **Site Conditions:** The proposed use would be comprised of two lots located at 2506 Haste Street and 2455 Telegraph Avenue. The lots would be merged as a condition of this project, forming an L-shaped parcel with the frontage on Haste Street and Telegraph Avenue. The existing storefront retailer is accessed from Telegraph Avenue, and the consumption lounge would be accessed from Haste Street. 2506 Haste Street was most recently occupied by a food establishment and is currently vacant

III. Project Description

- A. The proposed project would add a cannabis consumption lounge and offer amplified live music onsite at the current High-Fidelity Retail Storefront. The lounge would occupy the current 4,304 square-foot vacant building at 2506 Haste Street. The proposal requires a lot merger between 2506 Haste Street and 2465 Telegraph Avenue so that both are on the same premises, as required under State law, and the lounge and retailer would operate under a single license.

IV. Community Discussion

- A. **Neighbor/Community Concerns:** A pre-application poster was erected by the applicant on June 2, 2022. On November 22, 2022, the city mailed public hearing notices for the December 8, 2022 hearing to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. The project was continued to a date certain, February 9, 2023, at that meeting and additional public notice was not required but was resent on January 26, 2023. At the time of this writing report, staff has not received any communications regarding the project.
- B. **Committee Review:** This project is not subject to design or landmark review. If exterior changes and/or signage are later proposed as part of the associated tenant improvement(s), they will be evaluated by the applicable land use staff at that time.

V. Issues and Analysis

- A. **General Non-Detriment Finding:** BMC Section 23.406.040(E) requires that, before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would 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.
1. A consumption lounge is defined as a "storefront" retailer that has a designated cannabis smoking room or a room for edibles that meet state requirements (BMC 12.21.020). The Lounge will be part of an existing retailer and designated for consuming cannabis products that comply with state and local regulations.

The proposed consumption lounge and live amplified music would not conflict with the purpose of the Commercial Telegraph District. The proposed project would also comply with the applicable operating standards listed in Chapter 12.21, Businesses: General Regulations.
 2. The project would be required to comply with the operation standards established by the City's Department of Health, Housing and Community Services (HHCS) (Attachment 2). These require consumptions lounges be delineated from common space not have direct access from the street into the lounge, or be viewable from street frontage. The proposed floor plan shows clearly demarcated areas for consumption that will be sealed off from the common space. The operating standards also establish requirements related to Environmental Health permits, ventilation, employee safety, and signage. As a result, the proposed project would not be detrimental.

- B. **C-T Findings:** BMC 23.204.110(E), the project aligns with the C-T District's general purpose, and would not interfere with the continuity of retail on the ground level. Since existing retail in the C-T is heavily dependent on foot traffic and is located near public transportation, the proposed use is not expected to increase traffic or increase parking demand. Because the proposed use would activate a vacant space in a pedestrian-oriented commercial district that is predominantly retail and would not include exterior changes, the cannabis lounge and amplified live music is compatible with the surrounding uses and buildings.
- C. The hours of operation will be 11 a.m. to 9 p.m. daily which complies with BMC 23.302.020 and is consistent with operating hours of surrounding businesses.

A. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses, architectural design, and scale.

Staff Analysis: The proposed project scope does not include the exterior building changes or require new construction.

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

Staff Analysis: The use does not conflict with zoning standards, scale, historic character or surrounding uses. The proposed project would establish the additional use of the consumption lounge incidental to the retail storefront and add live amplified music and does not conflict with the General Plan. The proposed consumption lounge is allowed with a Use Permit per Berkeley Municipal Code (BMC) 23.320.020(F)(1) as part of an established retail storefront. The use would not conflict with the historic character, existing uses, and scale it is consistent with the uses of the district.

3. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

Staff Analysis: The project site does not require additional parking as it is located in a commercial area easily accessible by transit and not expected to create more traffic or demand in excess of current parking supply.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE ZP2022-0074 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1).

Attachments:

1. Findings and Conditions
2. HHCS Operating Standards, dated November, 2022
3. Project Plans, received January 6, 2023
4. Public Hearing Notice, dated November 22, 2022
5. Request for Continuance, dated December 8, 2022
6. Public Hearing Notice, dated January 26, 2023

Staff Planner: Cecelia Mariscal, cmariscal@cityofberkeley.info, (510) 981-7439

ATTACHMENT (1)

FINDINGS AND CONDITIONS

FEBRUARY 9, 2023

2506 Haste Street

Use Permit ZP2022-0074 to add a Cannabis Consumption Lounge and amplified live music to an existing Cannabis Retail Storefront.

PERMITS REQUIRED

- Use Permit to establish a lounge in an existing cannabis retailer, under Berkeley Municipal Code (BMC) Section 23.320.020(F)
- Administrative Use Permit to play amplified music indoors, under BMC Section 23.302.020(D).

I. 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”).
2. 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 would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23.406.040(E)(1) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would 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 because:
 - A. The proposed project will add a consumption lounge and amplified live music to the existing cannabis retail storefront in the Telegraph Avenue Commercial District. The two lots addressed as 2506 Haste Street and 2465 Telegraph Avenue will be merged so that the retailer and lounge will be on the same premises, as required under State law, and would operate under a single license.
 - B. The consumption lounge will conform to all applicable State and local regulations and the applicable Health, Housing, and Community Services Operating Standards.
 - C. The amplified live music is incidental to a permitted use and will comply with BMC Section 13.40.070(B)(2) (Prohibited Acts) (#25)

III. OTHER FINDINGS FOR APPROVAL

2. As required by Section 23.204.110(A) of the BMC, the Zoning Adjustments Board finds that the proposed is compatible with the purposes of the Telegraph Avenue Commercial District. The space 4,304 square foot building will be converted to a Cannabis Consumption Lounge that will activate the street frontage, contribute to the diversity of goods and services available to local residents and be compatible with the character and purpose of the district. No exterior changes are being proposed to the existing building and therefore, will not interfere with the existing street frontage and is compatible with the design and character of the district. This district relies on pedestrian foot traffic and is located near public transportation; the proposed use would not be expected to generate traffic beyond the capacity of the district.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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. **Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. **Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. **Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action

specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____
Name Phone #

Prior to Issuance of Any Building & Safety Permit (Construction)

11. Parcel Merger The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
12. Obtain the proper permit(s) and approval from Environmental Health, in conformance with the applicable State and local regulations, including the applicable Department of Health, Housing, and Community Service's Operating Standards.
13. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed-use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third-party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.

- 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
 - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

HVAC Noise Reduction HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.

14. Recycling and Organics Collection Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

During Construction

15. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

Prior to Final Inspection or Issuance of Occupancy Permit:

16. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
17. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 6 2023, except as modified by conditions of approval.

At All Times:

18. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
19. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review approval.
20. Transit Subsidy Condition. If 10 or more employee, the applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
21. Periodic Review and Reporting. The City may require periodic review of this approved project to verify compliance with permit requirements and conditions of approval. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement. This permit is subject to the provisions of BMC Section 23.404.080 (Permit Revocation) if violations of the permit requirements are found by the Zoning Officer.
22. 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.

- 23.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 - 24.** 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.
 - 25.** Loudspeakers (Amplified Sound) Not Associated with an Event. Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device, such that the sound therefrom violates the provisions of Section 13.40.050 or 13.40.060 is prohibited, except for sound levels for which a variance or permit has been issued by the Environmental Health Department.
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Operating Standards for Cannabis Consumption Lounges

November 2022

Section 1. Authority

Environmental Health is a Division within the Department of Health, Housing, and Community Services at the City of Berkeley. Berkeley Municipal Code (BMC) Section 23.320.020.F.2 specifies that “lounges must comply with the operational standards established by the City’s Department of Health, Housing, and Community Services.” Environmental Health is the City’s Division primarily responsible for inspection and enforcement of cannabis Retailers. Additional definitions and requirements can be found in BMC Sections 12.21.020.U, 12.21.020.V, 12.21.020.Y, 12.21.040.F, 12.22.040.F.1&2, and 23.320.020.F.

Section 2. Definitions

General cannabis terms and phrases are codified in BMC 12.21.020. Those that specific to lounges are repeated below, along with any terms within this document that may need to be specified.

“**Applicant**” an owner of a cannabis Storefront Retailer who has obtained a City of Berkeley Use Permit to operate a Consumption Lounge on the Premises of the Retailer.

“**Cannabis Products**” shall have the same meaning as set forth in Section 26001 of the Business and Professions Code and BMC 12.21.020.K, as amended from time to time, and includes but is not limited to concentrates such as butter, shatter, kief, hash, vaping oils, etc., as well as natural and infused raw cannabis plant matter and pre-rolls (leaf and flower), edibles, and Cosmetic Cannabis Products.

“**City**” means The City of Berkeley.

A Vibrant and Healthy Berkeley for All

“Consumption” is the smoking, vaping, eating, drinking, chewing, or otherwise ingesting Cannabis Products and the application of topically of infused Cosmetic Cannabis Products.

“Consumption Lounge” is a Storefront Retailer that has a Designated Cannabis Smoking Room or a room for consuming edibles that meets State requirements (BMC 12.21.020.Y). *Also includes a Microbusiness with a Storefront Retailer. Does not include Nursery Microbusiness nor Delivery-Only Retailers.*

“Cosmetic Cannabis Product” means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures (BMC 12.21.020.P).

“Dabbing” – the combustion and ingestion of a concentrated product such as shatter. A form of “smoking.”

“Division” means The Environmental Health Division.

“Designated Cannabis Smoking Room” means a designated area on the premises of a Cannabis Business where customers may smoke cannabis (BMC 12.21.020.U). *Includes Storefront Retailers and Microbusinesses with a Storefront Retailer.*

“Designated Cannabis Smoking Room Ventilation System” means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion (BMC 12.21.020.V).

“Infuse” means a process by which cannabis, cannabinoids, or cannabis concentrates are directly incorporated into a product or incorporated into a product formulation to produce a cannabis product.

“Intoxicated” means someone who has used alcohol or other drugs of impairment and is unable to exercise care for one’s safety or the safety of others or one that interferes with, obstructs or prevents others from using the establishment peacefully.

“MAUCRSA” means the Medicinal and Adult-Use of Cannabis Regulation and Safety Act.

“Potentially Hazardous Foods (PHFs)” are foods which require temperature control in order to be safe and are defined in the California Retail Food Code Section 113871, as amended from time to time.

“Premises” has the meaning as set forth in Department of Cannabis Control, Medicinal and Adult-Use Commercial Cannabis Regulations, California Code of Regulations Title 4, Division 19. Department of Cannabis Control, as amended from time to time, and includes a Retailer’s space at a Temporary Cannabis Event.

“Pre-packaged Cannabis Product” means a Cannabis Product that is produced, packaged, and distributed by Cannabis Businesses holding valid Manufacturer and Distributor licenses from the Department of Cannabis Control, and is served in its original packaging.

“Preparing” or “Preparation” means the heating, reheating, or serving of Cannabis Products.

“Shatter” – a concentrated cannabis product consisting mostly of THC crystals.

“Smoke” or “Smoking” has the meaning set forth in Section 11362.3 of the California Health and Safety Code, as amended from time to time, and includes vaping and dabbing.

“Temporary Cannabis Event” means that as specified in Department of Cannabis Control, Medicinal and Adult-Use Commercial Cannabis Regulations, California Code of Regulations Title 4, Division 19. Department of Cannabis Control, as amended from time to time.

“Temporary Consumption Facility (TCF)” – means a temporary Type 1 or Type 2 facility as defined in Section 3.

“Tobacco Products” – any product containing the leaf of the tobacco plant or extracts of the plant.

“Vaping” the vaporization of a liquid cannabis extract product, usually by a cartridge that heats an oil. A form of “smoking.”

Section 3. Permits for the On-Site Consumption of Cannabis

- a. Pursuant to BMC 23.320.020.F.1, an Applicant for a Cannabis Consumption Lounge must first obtain a Use Permit from the City.
- b. All Cannabis Smoking Rooms must be approved for occupancy by the City’s Building & Safety and Fire Departments.
- c. All Cannabis Consumption Lounges are subject to Plan Review and approval by City departments including Planning, Building and Safety, Fire, and Environmental Health.
- d. Consumption of any kind shall not be visible to the public.
- e. No consumption lounge permits shall be available to anyone that does not hold a valid State and local Storefront Retailer license or Microbusiness with a Storefront Retailer.
- f. Four permit classes may be available:
 - (1) Type 1: Annual Cannabis Consumption-Prepackaged Cannabis Products-No Preparation A permitted in possession of this permit type may allow the on-site consumption of Pre-Packaged Cannabis Products. All products must have been sold by the permittee in compliance with all State regulations. The

permittee may not engage in any type of preparation and must comply with all operational standards herein.

(2) *Type 2: Annual Cannabis Consumption-Limited Preparation of Cannabis Products*

A permittee in possession of this permit type may allow the on-site consumption of Pre- Packaged Cannabis Products and may also prepare and allow the consumption of Pre- Packed Cannabis Products. All products must have been sold by the permittee in compliance with all State regulations and must comply with all operational standards herein.

(3) *Type 3: Temporary Type 1 or 2 Consumption of Cannabis Products*

If consumption is allowed at a City-approved, MAUCSRA-defined Temporary Cannabis Event, a Retailer must obtain a Temporary Consumption Facility (TCF) permit from the Division. All products must have been sold by the permittee in compliance with all State regulations and must comply with all operational standards herein. A Retailer may set up a TCF on their Premises no more than three consecutive days in conjunction with a holiday or anniversary celebration. If in an outdoor enclosed tent, the Retailer must also obtain a Use Permit allowing the activity at that location.

(4) *Type 4: Cannabis Smoking*

A permittee in possession of this permit type may allow on-site smoking of cannabis or Cannabis Products and may also allow the consumption of Pre-Packaged Cannabis Products and/or the consumption of prepared cannabis products, subject to approval by the Environmental Health Division. All products must have been sold by the permittee in compliance with all State regulations and must comply with all operational standards herein. The Permittee must identify any type of non-smoking consumption they are also requesting at the time of initial application.

Section 4. Permit Application and fees

- a. Every applicant for a Type 1, 2, or 4 consumption permit shall file an application with the Division on a form supplied by the Division and shall pay non-refundable plan review fees at the hourly Division rate of \$170.00/hr, as updated periodically. If the permit is issued, the one-time processing fee of \$182.00 shall be paid, as updated periodically. Once issued a permit, the payment of any annual Operating and Inspection permit fee approved by City Council will be required to maintain the permit. Such fees are to be listed on the most current Fee Schedule approved by the City Council. Until such time, all inspections and other City work are billed at the hourly rate.
- b. Any application that requires a construction permit shall also file plans with the City Building and Safety Department. All proposed consumption lounges may also have to obtain an inspection by the Fire Department. These departments

- require separate fees.
- c. Every applicant for a Type 3 TCF consumption permit shall file an application with the Division on a form supplied by the Division and shall pay a non-refundable TCF Pre-Packaged Products, no Retailer preparation or a TCF Pre-Packaged Products with Retailer preparation fee as approved by City Council on the most recent Fee Schedule.
 - d. One of the owners of the Cannabis Business must sign the application. By signing the application, the owner(s) understand that under penalty of perjury, they declare that the information contained within and submitted with the application is complete, true, and accurate. They understand that a misrepresentation of fact is cause for rejection of the application, denial of the license, or revocation of a license issued.

Section 5. Required Information with application submittals.

- a. A complete and detailed diagram of the proposed area of the Premises in which consumption will be conducted. If plans were submitted to the City's Permit Center and/or Building and Safety, no separate diagram need be submitted.
- b. The diagram shall show the boundaries of the property and the proposed areas to be licensed for consumption, showing all structure boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, windows, doorways, and common or shared entryways, and shall include a brief statement or description of the principal activity to be conducted therein in each room designated for consumption.
- c. The diagram shall show and identify commercial cannabis activities that will take place in each area of the premises, and identify limited-access areas.
- d. The diagram shall be to scale.
- e. A copy of the approved Use Permit.
- f. If the applicant is applying for a Type 2 permit, a list of cannabis products that will be minimally prepared, and a Standard Operating Procedure (SOP) for preparation. The Division shall be notified of any changes to the menu or the SOP, for approval, before any changes take effect.
- g. Where the applicant is applying for a Type 3 permit, the applicant need only supply the information required on the application, but shall include an approved Use Permit to conduct TCF activities if on the Retailer's fixed Premises.
- h. Where the applicant is applying for a Type 4 permit, a Designated Cannabis Smoking Room Ventilation Proposal that meets the requirements of Section 6.

Section 6. Designated Cannabis Smoking Room Ventilation Proposal

An applicant for a Type 4 permit shall submit to the Division, prior to issuance of a mechanical system approval from the City of Berkeley Building and Safety Department, the Designated Cannabis Smoking Room Ventilation Proposal. In addition, a letter signed and stamped by a licensed mechanical engineer or other individual authorized by the California Business and Professions Code Sections 6700- 6799 (Professional Engineer Act) as amended from time to time that demonstrates with reasonable

certainty that the performance standards described in these Rules will be met and the Designated Cannabis Smoking Room Ventilation System will be capable of removing all smoke and odors and that the room remains in a negative-pressure state with doors fully open.

- a. The Designated Cannabis Smoking Room Ventilation Proposal shall include enough project information (e.g. location, size, adjacent uses) to begin the Designated Cannabis Smoking Room Ventilation approval process between the Division and the project sponsor.

- (1) All applicants for a Type 4 permit shall submit to the Division a Designated Cannabis Smoking Room Ventilation Proposal prepared by, or under the supervision of a licensed professional engineer that is able to design mechanical ventilation systems. A Designated Cannabis Smoking Room Ventilation Proposal shall include the name, title and license number of the person preparing the proposal.

- (2) The Designated Cannabis Smoking Room Ventilation Proposal shall explain how the project will achieve the standards in this section. The Designated Cannabis Smoking Room Ventilation Proposal shall include a statement signed by the person who prepared it, certifying that in their judgement the ventilation system proposed will be capable of achieving the protection from particulate matter (PM 2.5) equivalent to that associated with MERV 11 filtration (as defined by ASHRAE standard 52.2), will not exhaust cannabis odors to the exterior, and that the Designated Cannabis Smoking Room will remain under negative pressure, at all times, while in use. In updates to these standards, the Division may specify additional or alternative protective equivalents as technology and research dictate. Please note that upon the annual renewal of a Type 4 permit, and in the event there is a change of use to the Designated Cannabis Smoking Room's property, the Division may implement additional measures, including, but not limited to: additional filters, odor protections, and/or relocation of exhaust outlets. This proposal must include information that addresses the following:

- a) Air changes for the Designated Cannabis Smoking Room.
- b) Air changes for common areas inside Cannabis Retailer or Microbusiness.
- c) Filter type and odor control measures for the Designated Cannabis Smoking Room.
- d) Location of air intakes and exhaust outlets (exhaust outlets located the maximum distance possible from any residential or commercial building, and no less than 15 feet). Exhaust outlets shall comply with the California Mechanical Code 502.2.2-Other Product-Conveying termination requirements.
- e) If negative pressure will be maintained only in the Designated Cannabis Smoking Room.
- f) Areas not served by enhanced ventilation.
- g) Area or areas of building where smoking or vaping will occur.
- h) If applicable, location of Z-ducts, trickle vents or similar unfiltered air system used for the Cannabis Retailer or Microbusiness.

- i) Percentage of total square footage, for customer use, of the permitted Cannabis Retailer that will be used for vaping or smoking of cannabis in the Designated Cannabis Smoking Room.
 - j) Designated Cannabis Smoking Room does not share space with employee work area. (Yes/No)
 - k) Maximum occupant load for the Designated Cannabis Smoking Room.
- b. The Division shall review the Designated Cannabis Smoking Room Ventilation Proposal and may require additional modification or justification prior to the Division's approval. The Division shall provide a response to applicants within 30 days of receipt of an initial or revised Designated Cannabis Smoking Room Ventilation Proposal. The Division's action on the Designated Cannabis Smoking Room Ventilation Proposal shall be one of the following:
- (1) Approve Designated Cannabis Smoking Room Ventilation Proposal without further revision; or
 - (2) Invitation to revise according to specific comments and resubmit Designated Cannabis Smoking Room Ventilation Proposal; or
 - (3) Reject Designated Cannabis Smoking Room Ventilation Proposal.

Section 7. Required Standards for the Designated Cannabis Smoking Room

- a. The permittee shall demonstrate to the Division's satisfaction that the following standards have been met prior to approval by the Division:
- (1) The Designated Cannabis Smoking Room will be located in a non-work area where employees are not required to enter the Designated Cannabis Smoking Rooms as a condition of their employment.
 - (2) The Designated Cannabis Smoking Room shall have signage to designate smoking areas and the locations where signage will be installed.
 - (3) The Designated Cannabis Smoking Room shall have a separate heating, ventilation and air-conditioning (HVAC) system such that none of the air in the Designated Cannabis Smoking Room will be recirculated into other parts of the Cannabis Business's premises, or other parts of the premises.
 - (4) The Designated Cannabis Smoking Room shall be completely separated from the remainder of the premises by solid partitions or glazing without openings other than doors, and all doors leading to the Designated Cannabis Smoking Room must be self-closing. All doors to the Designated Cannabis Smoking Room must be installed with a gasket to provide a seal where the door meets the stop.
 - (5) The Designated Cannabis Smoking Room shall exhaust 100% of the air directly to the outside through a Pollution Control Unit and Odor Control Unit that, at a minimum, eliminates all detectable odor, smoke and by-product of combustion so as to prevent any and all public nuisances.
 - (6) The Designated Cannabis Smoking Room shall remain under negative pressure and shall have a 10% differential, in relation to the other spaces of the establishment.
 - (7) The Designated Cannabis Smoking Room shall be equipped with a ventilation system that provides 60 cubic feet per minute (cfm) of supply air per smoker.

- (8) The Designated Cannabis Smoking Room shall not be directly accessible from the primary outside entrance to the establishment, and may not be visible from the fronting street or store front.
- (9) The Designated Cannabis Smoking Room shall reside within the existing, permitted premises of the Cannabis Retailer or Microbusiness.
- (10) The Designated Cannabis Smoking Room's ventilation system and all mechanical equipment will be designed to assure compliance with all requirements in the City of Berkeley Noise Ordinance of BMC Chapter 11.
- (11) The permittee shall adopt a complaint process by which it will review and address complaints by employees or members of the public concerning on-site consumption or smoking and provide a written process to the Division.
- (12) The Designated Cannabis Smoking Room's ventilation system shall be designed to comply with the Product-Conveying Systems, per California Mechanical Code 505.0 requirements.

Section 8. Operations and Maintenance

- a. The Designated Cannabis Smoking Room Ventilation Proposal must include a description of the Operations and Maintenance plan for the ventilation system and methods for recordkeeping to ensure that the Operations and Maintenance Plan is followed.
- b. A current Operations and Maintenance Manual must be kept on-site and provided to all managers, building engineers and building owners.
- c. The manual shall be reviewed annually by the Division and updated as appropriate. The manual shall include:
 - (1) A provision that the hours of operation of the Designated Cannabis Room Ventilation System will be no earlier than 10 am and no later than 10 pm each day;
 - (2) The approved Designated Cannabis Smoking Room Ventilation System installed shall be properly maintained and documented as stated in the operations and maintenance manual following standard practices, and as specified by the manufacturer.
 - (3) Documentation of the installation and/or maintenance of the Designated Cannabis Smoking Room Ventilation System shall be preserved for five years after installation or maintenance.

Section 9. Failure or Malfunction of the Designated Cannabis Smoking Room Ventilation System

- a. Failure to properly maintain the Designated Cannabis Smoking Room Ventilation System may result in a permit suspension until resolved to the Division's satisfaction.
- b. Any failure of the Designated Cannabis Smoking Room Ventilation System and the actions that will be taken to repair the Designated Cannabis Smoking Room Ventilation System to its original, approved and permitted functions shall immediately be reported to the Division.

- c. Any malfunction or failure of the system to operate in its original, approved and permitted functions, as determined by either the permittee or the Division, shall require the licensee to immediately cease and desist all smoking activity until repairs have been made to ensure the system is operating in its original, approved and permitted functions. Upon failure of the system, the Designated Cannabis Smoking Room shall not be used for on-site vaping or smoking until the Division has confirmed that all repairs/adjustments have been made to restore the ventilation system to its original, approved and permitted functions.

Section 10. All Permittees shall be Required to Provide the Following Amenities and Services:

- a. A restroom that can be used by the customers. Flooring inside the restroom shall be constructed of a commercial grade material that is smooth, durable, nonabsorbent and easy to clean. Floor surfaces shall be coved at the juncture of the floor and wall with a 3/8 inch minimum radius coving and shall extend up the wall at least 4 inches. Walls shall be constructed so as to be smooth, durable, nonabsorbent and easy to clean. All plumbing fixtures installed inside the restroom shall be installed in compliance with applicable local plumbing ordinances.
- b. Handwashing facilities shall be provided within all restrooms. Handwashing facilities shall be equipped to provide warm water under pressure for a minimum of 15 seconds through a mixing valve or combination faucet. If the temperature of water provided to a handwashing sink is not readily adjustable at the faucet, the temperature of the water shall be at least 100 degrees Fahrenheit, but not greater than 108 degrees Fahrenheit.
- c. Must be vermin proof and shall be constructed and maintained so as to prevent the entrance and harborage of vermin.

Section 11. Structural Requirements for Type 1 Permits:

- a. Mop sink with appropriate flooring. Mop sink shall be installed in compliance with applicable local plumbing ordinances. At least one curbed cleaning facility or janitorial sink equipped with hot and cold water and a drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste. The flooring inside the room where the mop sink is located shall be constructed of a commercial grade material that is smooth, durable, nonabsorbent and easy to clean. Floor surfaces shall be coved at the juncture of the floor and wall with a 3/8 inch minimum radius coving and shall extend up the wall at least 4 inches. Walls shall be constructed so as to be smooth, durable, nonabsorbent and easy to clean.

Section 12. Structural Requirements for Type 2 Permits:

- a. Shattered proof lighting over the area where people are eating the cannabis

- product. Lighting shall be shielded, coated or otherwise shatter- resistant.
- b. A three-compartment sink shall be installed in compliance with applicable local plumbing ordinances, shall be maintained so as to prevent any contamination, and shall be kept clean, fully operative, and in good repair. The three-compartment sink shall have at least three compartments with two integral drain boards for manually washing, rinsing and sanitizing equipment and utensils. Sink compartments shall be large enough to accommodate immersion of the largest utensil being used in daily operations. Manual sanitization shall be accomplished in the final sanitizing rinse by one of the following:
 - Immersion for at least 30 seconds where the water temperature is maintained at 171 degrees Fahrenheit or above.
 - The application of sanitizing chemicals by immersion, manual swabbing, or brushing, using one of the following solutions:
 - Contact with a solution of 100 ppm available chlorine solution for at least 30 seconds.
 - Contact with a solution of 25 ppm available iodine for at least one minute.
 - Contact with a solution of 200 ppm quaternary ammonium for at least one minute.
 - Contact with any chemical sanitizer that meets the requirements of Section 180.940 of Title 40 of the Code of Federal Regulations when used in accordance with the manufacturer's use directions.
 - Other methods approved by the Division.
 - c. After cleaning and sanitizing, equipment and utensils shall be air dried or used after adequate draining before contact with a consumable cannabis product and shall not be cloth dried, except that utensils that have been air dried may be polished with cloths that are maintained clean and dry.
 - d. Testing equipment and materials shall be provided to adequately measure the applicable sanitization method used during manual or mechanical ware washing.
 - e. The concentration of the sanitizing solution shall be accurately determined to ensure proper dosage.
 - f. Handwashing sink inside the preparation area shall be installed in compliance with applicable local plumbing ordinances, shall be maintained so as to prevent any contamination, and shall be kept clean, fully operative, and in good repair. Handwashing facilities shall be installed within the limited preparation area and be equipped to provide warm water under pressure for a minimum of 15 seconds through a mixing valve or combination faucet. If the temperature of water provided to a handwashing sink is not readily adjustable at the faucet, the temperature of the water shall be at least 100 degrees Fahrenheit, but not greater than 108 degrees Fahrenheit.
 - g. Cannabis product preparation or handling area shall be finished with a commercial grade floor material that is smooth, durable, nonabsorbent and easy to clean. Floor surfaces shall be coved at the juncture of the floor and wall with a 3/8 inch minimum radius coving and shall extend up the wall at least 4 inches. Walls shall be constructed so as to be smooth, durable, nonabsorbent and easy to clean. Walls inside the cannabis preparation or handling area shall be finished with a commercial grade material and shall be smooth, durable, nonabsorbent

and easy to clean.

- h. A commercial grade water heater capable of providing an adequate, protected, pressurized, potable supply of hot water and cold water shall be provided. Hot water shall be supplied at a minimum temperature of at least 120 degrees Fahrenheit measured from the faucet, unless otherwise specified in this part. The water supply shall be from a water system approved by the health officer or the local enforcement agency.

Section 13. Requirements

- a. All Permittees shall comply with the following requirements:
 - (1) The consumption of cannabis or cannabis products that were not purchased from the Permittee is prohibited. Cannabis and Cannabis Products that were purchased or otherwise procured from a business or person other than the Permittee may not be consumed on the premises of the Permitted Cannabis Facility.
 - (2) Permittees shall be responsible for preventing the consumption of tobacco, alcohol or any controlled substance, other than a cannabis product, within the Cannabis Retailer or Microbusiness, Designated Cannabis Smoking Room or area established for consumption of cannabis.
 - (3) All cannabis and cannabis products shall be protected from contamination by storing in a clean, dry location, where they are not exposed to splash, dust, vermin, or other forms of contamination or adulteration, and at least six inches above the floor.
 - (4) The premises of a permitted business shall at all times be constructed, equipped, maintained, and operated as to prevent the entrance and harborage of animals, birds, and vermin, including, but not limited to, rodents and insects.
 - (5) A permitted cannabis facility shall be kept free of vermin.
 - (6) All equipment shall be installed so as to be easily cleanable, prevent vermin harborage, and provide adequate access for service and maintenance.
 - (7) A Permittee shall post signage in compliance with Proposition 65 within the Designated Cannabis Smoking Room or consumption area stating the following: **“Detectable Amounts of Chemicals Known to the State of California to Cause Cancer, Birth Defects or Other Reproductive Harm May Be Found inside this Facility”**
 - (8) A Permittee shall post signs at locations clearly visible within the consumption area and at all exits requesting patrons to respect residents of adjacent residential neighborhoods by reducing noise levels when leaving.
 - (9) A Permittee shall refuse service to intoxicated patrons.
 - (10) A Permittee shall designate an employee or manager for all shifts that will be on- site, to be the contact, for any complaints related to the Cannabis Retailer or Microbusiness consumption area or Designated Cannabis Smoking Room.
 - (11) A Permittee shall provide, to the Division, a contact number for the individual that will be responsible for handling any complaints relating to the

Cannabis Retailer, Microbusiness, consumption room or Designated Cannabis Smoking Room.

- (12) A Permittee shall post signage in all consumption areas and Designated Cannabis Smoking Rooms regarding the safe consumption of cannabis products.
- (13) Any employee or agent of the Division may enter and inspect the premises of a Permittee during business hours, without notice.
- (14) Cannabis Consumption shall not be visible from any public place or any nonage-restricted area on the premises.
- (15) For purposes of health and safety, the Division has the authority to limit the type of devices used to smoke cannabis or cannabis products in the Designated Cannabis Smoking Room.

Section 14. Additional Requirements for Type 1 Permit: Cannabis Consumption - Prepackaged Cannabis Products

The on-site consumption of Pre-Packaged Cannabis Products is allowed in the consumption area. The preparation of the Pre-Packaged Cannabis Products is not permitted, including but not limited to, heating or reheating.

Section 15. Additional Requirements for Type 2 Permit: Cannabis Consumption - Limited Preparation of Cannabis Products

- a. Permittees may heat, reheat or dispense a prepackaged cannabis product only.
- b. Permittees may not cook, compound, blend, infuse, extract, or prepare cannabis products.
- c. Permittees shall sanitize all utensils or equipment after each use.
- d. Permittees must ensure that all utensils or equipment being used are smooth, durable, nonabsorbent and easy to clean.
- e. Permittee may not manufacture on-site in the licensed Cannabis Retailer.

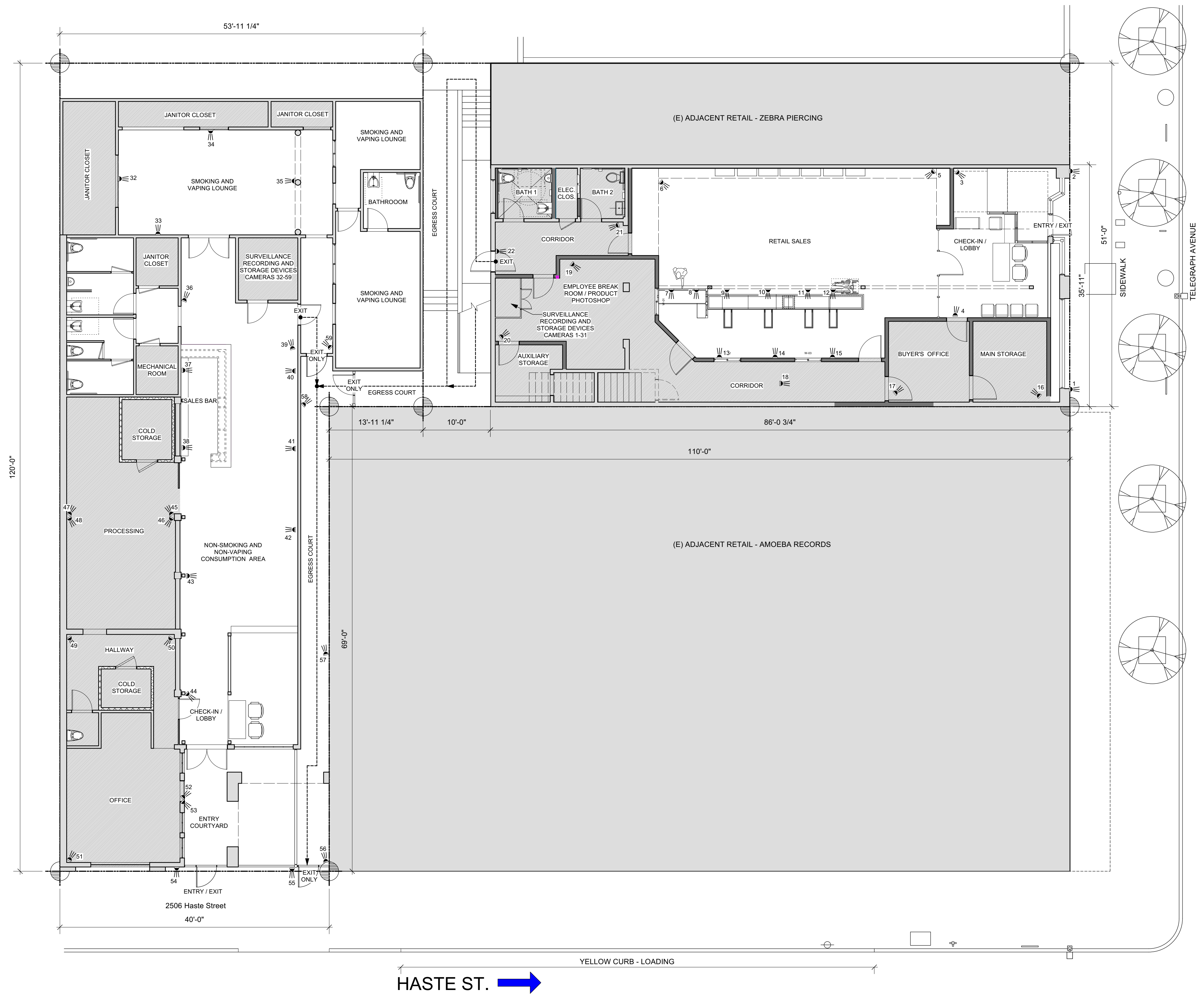
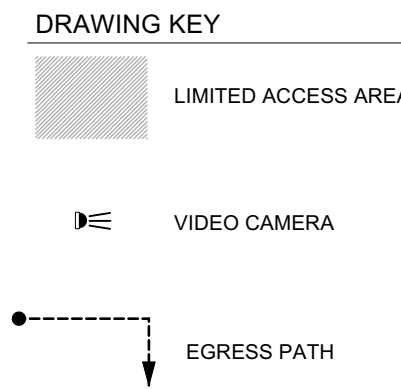
Section 16. Additional Requirements Type 4 Permit: Cannabis Smoking

- a. A Permittee shall ensure all on-site smoking or vaping shall be conducted inside the boundaries of the approved Designated Cannabis Smoking Room only.
- b. A Permittee shall limit the number of customers utilizing the Designated Cannabis Smoking Room at any given time to ensure the ventilation system is able to operate in accordance with the standards in this document at the optimum level necessary,
- c. removing smoke or vaping by-product while the Designated Cannabis Smoking Room is occupied. The Permittee shall abide by the Berkeley Fire Department occupant load for the Designated Cannabis Smoking Room. The Berkeley Fire Department shall set the occupant load for all Designated Cannabis Smoking Rooms.
- d. The Professional Engineer shall coordinate with the Berkeley Fire Department regarding maximum occupant load and the cubic foot per minute per person minimum airflow requirements.

Section 17. Sale and/or Consumption of Non-Cannabis Products on Premises

Standards for the onsite storage and/or consumption of non-cannabis foods and/or beverages may be developed should the State allow for such use, and the City allows for such use.

These Operating Standards were developed with permission from *The San Francisco Department of Public Health Director's Rules and Regulations for Cannabis Consumption* under *San Francisco Health Code Article 8A*, December 2018. These Operating Standards are specific to the City of Berkeley, however the engineering specifications developed by Industrial Hygienists and other professionals for San Francisco are identical.



1 GROUND FLOOR PLAN
Scale: 1/8" = 1'-0" WHEN PRINTED AT 24"x36"

Issue	Date
DR SET	----
DR SET rev 1	----
BUILDING PERMIT SET	----
BUILDING PERMIT REVISIONS SET	----

HYER ARCHITECTURE
263 amherst avenue
kensington ca 94708
510.527.1915 [t.f.]



DxPx Consumption Lounge
2506 Haste Street
Berkeley, CA 94704

Site Plan	
Date	11.22.22
Issue	ZAB
Drawn by	FLH
Sheet	A 1.0

Issue	Date
Annual Review	04.21.21
DR SET
DR SET rev 1
BUILDING PERMIT SET
BUILDING PERMIT REVISIONS SET

HYER ARCHITECTURE
 263 amherst avenue
 kensington ca 94708
 510.527.1915 [t.f.]



DxPx Consumption Lounge
 2506 Haste Street
 Berkeley, CA 94704

FLOOR PLAN

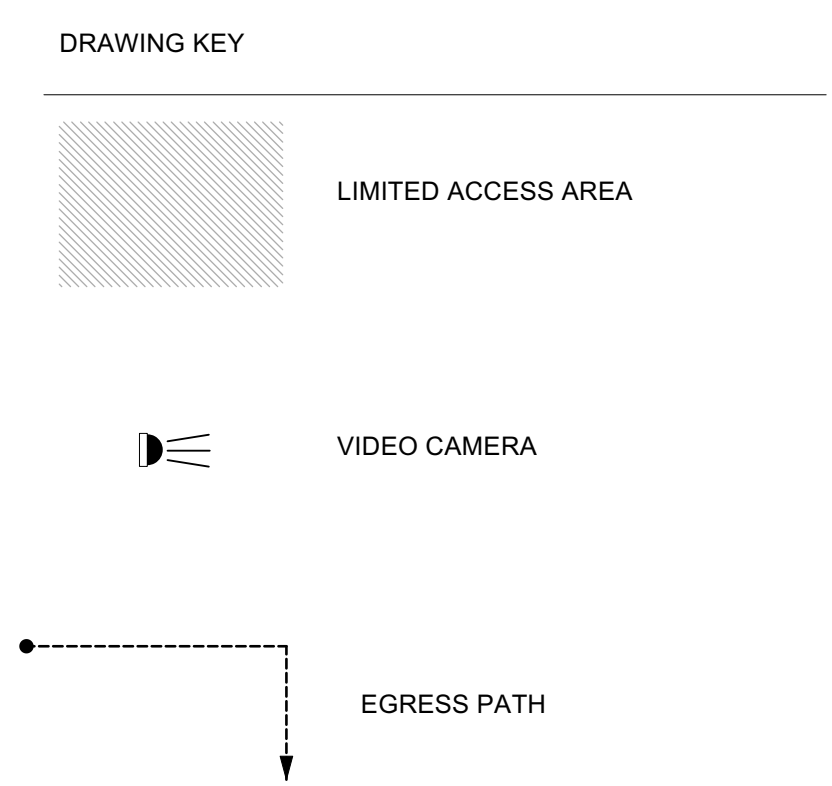
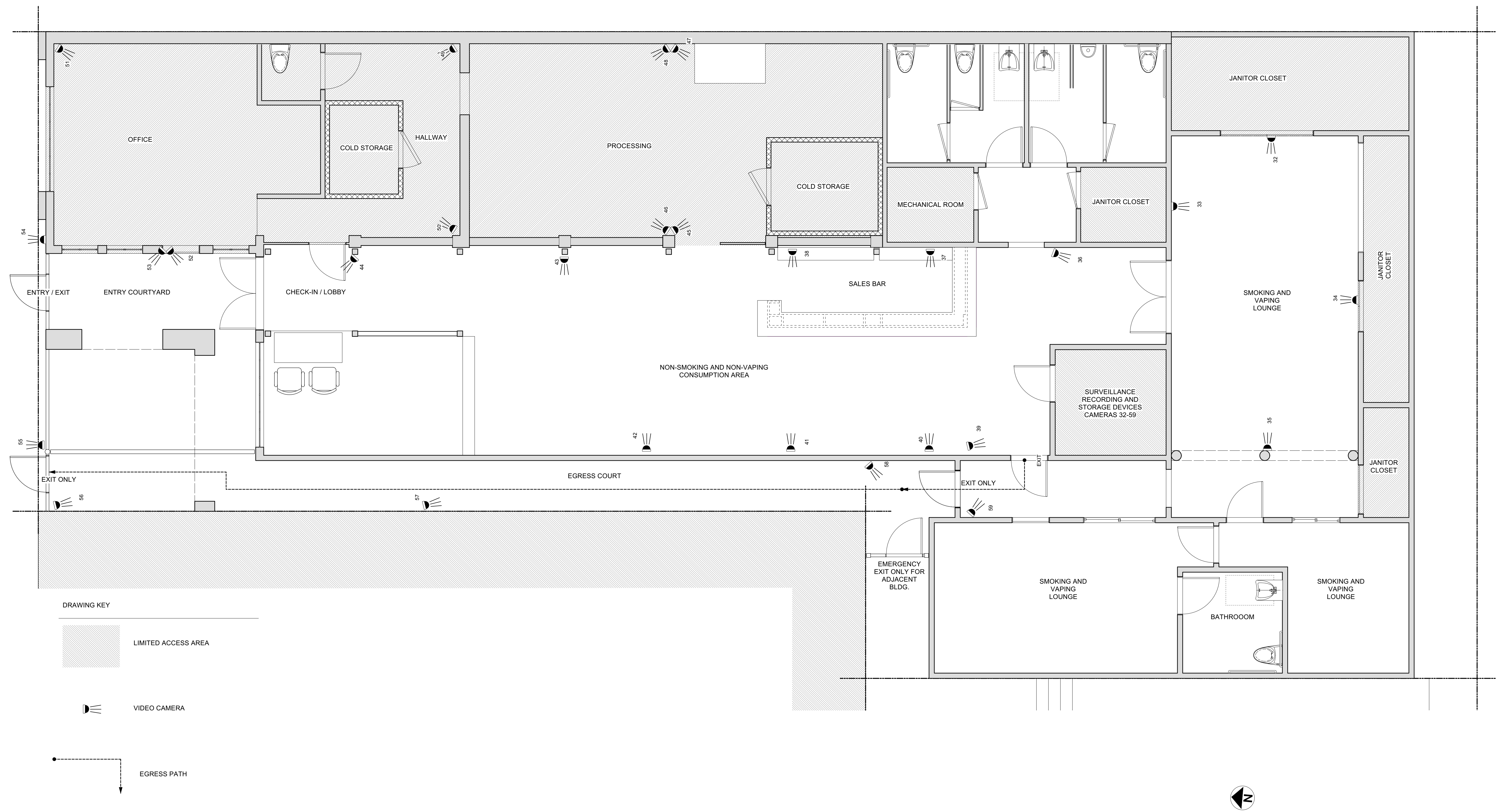
Date 11.22.22

Issue

Drawn by FLH

Sheet

A 2.0



1 FLOOR PLAN
 Scale: 1/4" = 1'-0" WHEN PRINTED AT 24"x36"



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

NOTICE OF PUBLIC HEARING

2506 Haste Street

Use Permit #ZP2022-0074 to add a consumption lounge and amplified live music to an existing cannabis retail storefront.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on December 8, 2022, **conducted remotely via Zoom. See the Agenda for details at:** https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-12-08_ZAB_Agenda.pdf. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: General Plan: Avenue Commercial
- Zoning: C-T-Telegraph Avenue Commercial District

B. Zoning Permits Required:

C. Use Permit to establish a lounge in an existing cannabis retailer, under BMC Section 23.320.020(F); and

D. Administrative Use Permit pursuant to BMC Section 23.302.020(D) to play amplified music indoors.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant/Property Owner: David Prinz, 2465 Telegraph Avenue, Berkeley

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Cecelia Mariscal, at (510) 981-7439 or cmariscal@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.



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
DECEMBER 8, 2022

2506 Haste Street

Use Permit #ZP2022-0074 to add a consumption lounge and amplified live music to an existing cannabis retail storefront

On November 22, 2022, a public hearing notice was published and mailed to surrounding neighbors for the above-referenced project to be heard at the December 8, 2022 Zoning Adjustments Board meeting. After the publication of the public hearing notice, but before the publication of the staff report, staff received the final operational standards from the Department of Health, Housing and Community Services. Staff needs additional time to review the application for compliance with the operational standards and requests a continuation to a date certain, February 9, 2023. The applicant has been notified of this continuance.

Attachment:

1. Notice of Public Hearing

Staff Planner: Cecelia Mariscal, cmariscal@cityofberkeley.info, (510) 981-7439



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

NOTICE OF PUBLIC HEARING

2506 Haste Street

Use Permit #ZP2022-0074 to add a consumption lounge and amplified live music to an existing cannabis retail storefront.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on February 9, 2023, **conducted via Zoom**, see the **Agenda for details at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-09_ZAB_Agenda.pdf**. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-T-Telegraph Avenue Commercial District

B. Zoning Permits Required:

- Use Permit to establish a lounge in an existing cannabis retailer, under BMC Section 23.320.020(F); and
- Administrative Use Permit, under BMC Section 23.302.020(D)

C. CEQA Recommendation: Categorically exempt pursuant to Section 1530 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant David Prinz, 2465 Telegraph Avenue, Berkeley
- Property Owner David Prinz, 2465 Telegraph Avenue, Berkeley

Further Information:

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Cecelia Mariscal, at (510) 981-7439 or cmariscal@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.