



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

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FOR BOARD ACTION  
MARCH 14, 2024

## 1328 Sixth Street

**Use Permit #ZP2023-0137 to modify UP#A2333/MOD and UP#A9990 to add 315 square feet to the existing outdoor dining area with alcoholic beverage service at an existing full-service restaurant in the Mixed Use - Light Industrial Zoning District.**

### I. Background

#### A. Land Use Designations:

- General Plan: M - Manufacturing
- Zoning District: MU-LI – Mixed Use-Light Industrial District

#### B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.040(A) to expand a non-conforming use (outdoor seating in MU-LI);
- Use Permit pursuant to BMC Section 23.310.020(B) to expand the floor area of an establishment that serves alcoholic beverages; and
- Use Permit pursuant to BMC Section 23.302.070(E)(9) to expand a food service establishment in the MU-LI.

#### C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

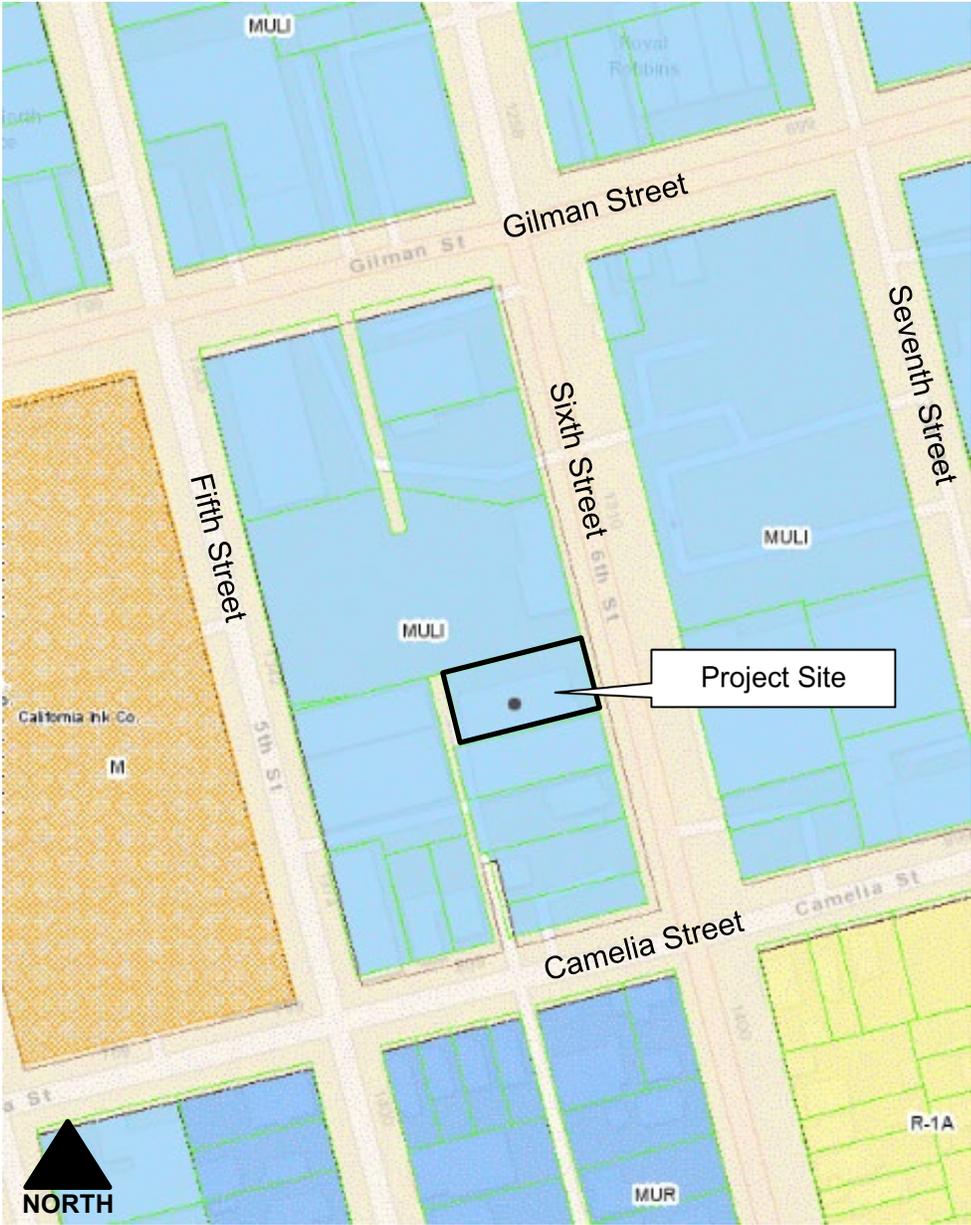
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**D. Parties Involved:**

- Applicant Erica Edgmon, 1328 Sixth Street, Berkeley, CA
- Property Owner Jim Maser, 1328 Sixth Street, Berkeley, CA

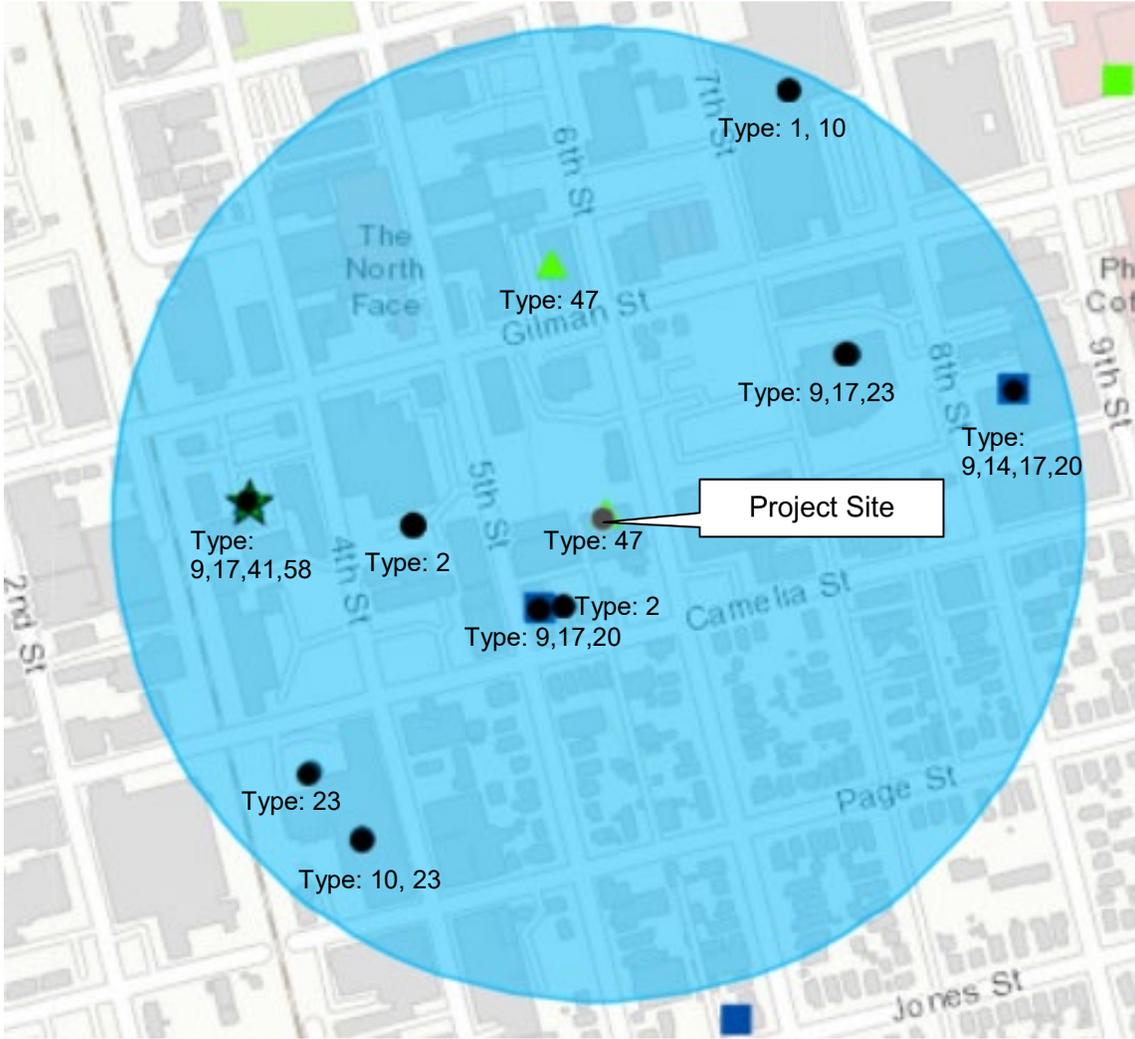
**Figure 1: Vicinity and Zoning Districts Map**



- Legend :
- MULI Mixed Use - Light Industrial
  - M Manufacturing
  - MUR Mixed Use - Residential
  - R-1A Limited Two-Family Residential



Figure 5: Liquor Licenses within 1,000 feet of the project site



	47	On-site beer, wine, and liquor
	20	Off-sale beer and wine
	58	Caterers
	1,2,9,10,14,17,23	Beer & Wine Manufacturers, Winegrower, and Wholesalers

**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Restaurant, Offices, Dwelling	MU-LI	Manufacturing
Surrounding Properties	North	Construction Products Manufacturing - Concrete plant		
	South	Warehouse		
	East	Bus Depot for Berkeley Unified School District, Material Recovery Enterprise, and Auto Repair.		
	West	Warehouse		

**Table 2: Special Characteristics**

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project expands an outdoor dining area that is less than 7,500 square feet, therefore, the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Alcohol Sales/Service Public Convenience or Necessity	Yes	The project currently has approval for on-site service of beer, wine, and distilled spirits (Type 47 ABC license). There is one Type 47 ABC licenses within 1,000 feet of the project site. Therefore, public convenience and necessity findings are required.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak ( <i>Quercus agrifolia</i> ) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Historic Resources	No	The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) <sup>a</sup> . Therefore, the Housing Accountability Act does not apply.
Housing Crisis Act of 2019 (SB 330)	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) <sup>a</sup> . SB 330 does not apply.

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Characteristic	Applicability	Explanation
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to liquefaction as shown on the <a href="#">State Seismic Hazard Zones</a> map <sup>b</sup> ; however, no new alterations or additions to the building would occur as a result of the project.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area, however, no excavation would occur as a result of the project. and the project site is not on the Cortese List <sup>c</sup> Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The area is served by Alameda Contra-Costa Transit District (AC Transit) bus lines 80, Z, 12, H. Additionally, the project site is located five blocks west of San Pablo Avenue, a transit corridor served by multiple AC Transit lines. In addition, the site is located near a Bike Way and Bike Boulevard, which runs east/west along Camelia and Gilman Streets, as well as on Fifth and Eighth Streets (north/south).
<p>Notes:</p> <p>a. Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.</p> <p>b. California Department of Conservation. DOC Maps: Geologic Hazards. Available: <a href="https://maps.conservation.ca.gov/geologichazards/">https://maps.conservation.ca.gov/geologichazards/</a></p> <p>c. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.</p>		

**Table 3: Project Chronology**

Date	Action
September 29, 2023	Use Permit Application submitted
November 8, 2023	Application deemed incomplete
November 13, 2023	Application resubmitted
December 13, 2023	Application deemed complete
February 29, 2024	Public hearing notices mailed/posted
March 14, 2024	ZAB hearing

## II. Project Setting

### A. Neighborhood/Area Description:

The project site is located on Sixth Street, between Gilman Street and Camelia Street, and five blocks west of San Pablo Avenue. The neighborhood is mixed-use light industrial in character, with a mix of one- to two-story light industrial buildings containing auto repair and warehouse uses. South of Camelia Street, the area transitions to a low-density residential neighborhood.

### B. Site Conditions:

The project site is located on an 8,643 square foot parcel with two connected buildings, 1328 and 1330 Sixth Street. 1328 Sixth Street is developed with the subject restaurant at the ground floor and three offices on the second floor; two are occupied by the restaurant and the third is occupied by a non-profit organization. There is an existing outdoor patio space along the north (side) property line. 1330 Sixth Street was granted a use permit in 1985 which allowed the restaurant to expand into the ground floor, resulting in a restaurant use at the ground floor and the second and third floor is one residential unit.

## III. Project Description

**A. Proposed Project Details:** Picante Restaurant proposes to add approximately 315 square feet to the front patio of the non-conforming outdoor dining area and to expand the alcoholic beverage service in this area. According to City permit records, the outdoor patio dining area was established prior to 1995, prior to use permit requirements for outdoor uses in the previous M-District. The current Zoning Ordinance does not allow outdoor seating for food service establishments in the MU-LI District (BMC 23.302.070(b)), therefore the current outdoor use is non-conforming and a Use Permit is required to expand into an area which has not been previously occupied by that nonconforming use (BMC 23.324.040(A)(2)(b)). The new outdoor area would connect with the existing space and would be adjacent to the front property line. A new solid 6-foot wall would enclose the open space in the front; patrons would pass through a gate to enter the restaurant and new outdoor seating area. The wall would provide privacy and security from the public right-of-way.

## IV. Community Discussion

### A. Neighbor/Community Concerns:

Prior to submitting this application to the city, a pre-application poster was installed on site by the applicant in September 2023. On February 29, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood at nearby three locations.

## **B. Landmark Preservation Commission / Design Review Committee Review:**

This project is not subject to review by the Landmarks Preservation Commission because it does not involve the demolition of a nonresidential building.

The exterior alterations were already approved under building permit B2022-04940. for the new wall and patio area in front of the building, abutting the public right of way.

## **V. Issues and Analysis**

### **A. CEQA Approach and Recommendation**

It is staff's recommendation that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"). The project complies with this exemption because the project involves minor exterior alterations to an existing restaurant. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project:

- The project is currently developed/characterized as developed by the California Natural Diversity Database;<sup>1</sup> therefore, it is not located in an environmentally sensitive area;
- The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
- There are no "unusual circumstances" at the project site that would result in significant environmental effects;
- There are no eligible or designated scenic highways within the City of Berkeley;<sup>2</sup> therefore, the project site is not in view of a state scenic highway;
- The site is not included on a list compiled pursuant to Government Code Section 65962.5;<sup>3</sup> and
- The project would not result in a substantial adverse change in the significance of a historical resource.

The CEQA determination is made by ZAB, as the decision-making body.

**B. Alcoholic Beverage Service:** An increase in alcoholic beverage sales or service that includes distilled spirits incidental to a food service establishment is allowed in the MU-LI District if a Use Permit is granted by the Zoning Adjustments Board in accordance with required findings as specified under BMC 23.310.020(B). An increase in alcoholic beverage sales or service includes adding to the capacity, floor area, or shelf space

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<sup>1</sup> California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqy>

<sup>2</sup> California Department of Transportation. California Scenic Highway Program's Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

<sup>3</sup> California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

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devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

Alcoholic beverage service is also regulated by BMC 23.310.020(D) for Special Use Standards. This section requires the City to make all of the "Public Convenience or Necessity" findings if an existing establishment has an ABC license of the same type, other than beer and wine service incidental to food service, within a 1,000-foot radius of the project site. There is currently one other establishment within a 1,000-foot radius with a type 47 ABC license for service of beer, wine, and distilled spirits incidental to food service – Lama Beans at 1290 Sixth Street, one block north.

In order to approve the Use Permit, the Board must affirm all of the "Public Convenience or Necessity" findings under BMC Section 23.310.020(D), as follows:

1. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.

Staff Analysis: This is an existing restaurant with incidental alcohol service which provides economic and cultural benefits to the West Berkeley community. The City would receive tax revenue from the alcoholic beverage sales. The proposed additional square footage would continue to provide these benefits while offering patrons alternate seating options.

2. *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.*

Staff Analysis: This is an existing restaurant with incidental alcohol service. The proposed additional outdoor seating would provide alternate seating options for patrons while maintaining consistent food and alcohol service throughout the restaurant. Alcoholic beverage service is typically a major part of a restaurant's revenue; to section off the new floor area to exclude alcohol service would not be economically beneficial.

3. *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

Staff Analysis: The Berkeley Police Department (BPD) analyzed police calls for service at this address over the past years; there are no calls for service related to alcohol. (Attachment 4)

4. *If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: The site is within 1,000 feet of Franklin Preschool when measured from a bird's-eye view, but over 1,000 feet when measured from a walking path. As a standard Condition of Approval, no visible advertising of alcohol beverages is allowed, and the business staff would check customers for proper identification to purchase alcohol. The effect of the proposed project would be minimal as the outdoor seating area is existing. The project would expand the existing outdoor seating and the new outdoor area would be enclosed by a wall.

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

Staff Analysis: Staff referred this application to the BPD for review and comment. In a letter dated January 29, 2024, BPD did not have any concerns with the increase in square footage because the business would operate on the same ABC License type, there are no calls for service related to alcohol, and the current ABC license is in good standing. (Attachment 4).

### **C. Findings for Approval in all Manufacturing Districts:**

Pursuant to BMC Section 23.206.100(A) *All Manufacturing Districts*, to approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project is consistent with the purposes of the district, compatible with the surrounding uses and buildings, complies with the adopted West Berkeley Plan, meets any applicable performance standards for off-site impacts. The project complies for the following reasons:

1. Increasing the square footage of an outdoor area for food service and alcohol service at an existing restaurant is consistent with the purposes of the MU-LI Zoning District and West Berkeley Plan because the use is compatible with the surrounding mix of light industrial uses which contributes to West Berkeley's uniqueness – a key feature which distinguishes West Berkeley from other areas of Berkeley and the region.

**West Berkeley Plan Consistency:** The West Berkeley Area Plan, adopted in 1993, also contains policies applicable to the project, including the following:

- 1) LU Goal 1, Policy C: Provide space for, and designate appropriate locations for – in planning and zoning policies – both neighborhood and regional serving retail businesses.

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- 2) LU Goal 2, Policy E: Create a Commercial district that would foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian- friendly a manner as possible.
- 3) LU Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

Staff Analysis: The project would be consistent with the West Berkeley Plan, as it would contribute to the full range of land uses and economic activities envisioned in the Plan. The increase in floor area for food service and alcohol service would support the existing restaurant, which offers a unique dining experience and serves both the immediate and outlying neighborhoods.

2. The proposed use is compatible with the surrounding uses and buildings because it contributes to the mix of uses in the area. It provides a service to the neighborhood which benefits Berkeley residents and businesses economically.
3. The proposed use is consistent with the West Berkeley Plan because the project would provide a continued economic and land use mix, incorporating light manufacturing and retail uses which benefit Berkeley residents and businesses economically and promotes the varied character of the area.
4. No additional performance standards for off-site impacts are applicable to this project. Parking is not required for expansions of existing uses within one-half mile of high-quality transit per BMC 23.322.020(D) Location Exemption. Therefore, the project would not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.

#### **D. Findings for Approval in the MU-LI District**

Pursuant to BMC Section 23.206.100(B), the proposed project in the MU-LI Zoning District is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; designed in such a manner to be supportive of the industrial character of the district; and if the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.

1. The project would be unlikely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings from manufacturing, wholesale trade or warehousing uses because the food service use is an existing use established in 1981. The expansion of the outdoor area would allow the business to continually improve to adapt with the changing needs of the surroundings and economy. It provides a continued land use mix and promotes the varied character of the area while contributing to the economic viability of the light industrial area. The proposed project would not affect buildings with a manufacturing, wholesale trade, or warehousing use.

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2. The project is designed in such a manner to be supportive of the industrial character of the district because there would be minor changes to the exterior of the building. The project would maintain the existing building façade and fence off the front patio area with a wall which would blend in with the existing architecture and approved under building permit B2022-04940.
3. The site is not split between MU-LI district and the C-W district. All changes to the exterior of the building would be subject to Design Review to insure the design is supportive of the light industrial character of the area.

**E. Food Service in MU-LI District:**

Pursuant to BMC Section 23.302.070(E)(9)(a) To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, would not have a significant detrimental impact on the industrial character of the area.

1. The project would be compatible with the surrounding uses and buildings, as there would be no change to the use of the building and the exterior improvements are minor in scale. As noted in Table 1, the adjacent uses are a bus yard, parking lot and warehouse. Picante restaurant is located along Sixth Street in the vicinity of a warehouse, a construction product manufacturing facility (Cemex concrete plant), auto repair services, and a surface parking lot. The proposed addition would be located next to the public right-of-way yet shielded by a wall as not to disrupt food service operations and uses in the area.

**F. General Non-Detriment Finding:** BMC Section 23.406.040(A) 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) General Non-Detriment: The existing restaurant has been in the neighborhood 43 years, since 1981. Through the years the business has gone through improvements and upgrades to maintain its economic vitality, provide quality service, remain a good neighbor, and respond to customer demand. To date, the restaurant has been in good standing with the community and there have been no complaints regarding alcohol service. The expansion of the outdoor area for food service and alcoholic beverage service would contribute to the ongoing improvements necessary for the business to remain viable in the neighborhood

and is an amenity desirable by customers today. The alcoholic beverage service would remain incidental to the food service and is subject to the City's standard conditions of approval regarding alcoholic beverage service. The outdoor dining area is enclosed by a wall, which would ensure that alcohol beverages remain on site and would separate the dining experience from the industrial surroundings. Given the restaurant's good standing in the neighborhood, the incidental nature of the alcoholic beverage service, as well as the location of the restaurant, the expansion of the outdoor area for food and incidental alcoholic beverage service would not have a detrimental impact 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.

## VI. Other Considerations (Zoning and Land Use Considerations)

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

1. Policy LU-1–Community Character: Maintain the character of Berkeley as a special, diverse, unique place to live and work.

Staff Analysis: The expansion of serving of distilled spirits at an existing restaurant would enhance customer experiences and help the restaurant to continue to promote the character of Berkeley as a special, diverse, and unique place to live and work.

2. Policy LU-33–West Berkeley Plan: Implement the West Berkeley Plan and take actions that would achieve the purposes of the Plan:

- A. Maintain the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley.
- B. Maintain the ethnic and economic diversity of West Berkeley's resident population.
- C. Maintain and improve the quality of urban life, environmental quality, public and private service availability, transit and transportation, and aesthetic and physical qualities for West Berkeley residents and workers.

Staff Analysis: The expansion of the outdoor area, which in turn expands the serving of alcoholic beverages, would be consistent with ethnic and economic diversity activities in a District that is well served by transit, and would contribute to the diversity and range of land use activities that are among the goals of the Berkeley General Plan.

## VII. 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:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"); and
2. **APPROVE** ZP2023-0137 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. [Findings and Conditions](#)
2. [Project Plans, received November 23, 2023](#)
3. [Notice of Public Hearing](#)
4. [Berkeley Police Department letter, dated January 29, 2024](#)

**Staff Planner:** Vicky Schlepp, [vschlepp@berkeleyca.gov](mailto:vschlepp@berkeleyca.gov), (510) 981-7422



# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MARCH 14, 2024

### 1328 Sixth Street

**Use Permit #ZP2023-0137 to modify UP#A233/MOD and UP#A990 to add 315 square feet to the existing outdoor dining area with alcoholic beverage service at an existing full-service restaurant in the Mixed Use - Light Industrial Zoning District.**

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#### ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.040(A) to expand a non-conforming use (outdoor seating in MU-LI);
- Use Permit pursuant to BMC Section 23.310.020(B) to expand the floor area of an establishment that serves alcoholic beverages; and
- Use Permit pursuant to BMC Section 23.302.070(E)(9) to expand a food service establishment in the MU-LI.

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#### I. CEQA FINDINGS

- A.** 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”).
- B.** 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.

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#### II. FINDINGS FOR APPROVAL

- A.** As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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:

1. The existing restaurant has been in the neighborhood 43 years, since 1981. Through the years the business has gone through improvements and upgrades to maintain its economic vitality, provide quality service, remain a good neighbor, and respond to customer demand. To date, the restaurant has been in good standing with the community and there have been no complaints regarding alcohol service.
2. The expansion of the outdoor area for food service and alcoholic beverage service will contribute to the ongoing improvements necessary for the business to remain viable in the neighborhood and is an amenity desirable by customers today. The alcoholic beverage service would remain incidental to the food service and is subject to the City's standard conditions of approval regarding alcoholic beverage service. The expanded outdoor dining area is enclosed by a wall, which will ensure that alcohol beverages remain on site and would separate the dining experience from the industrial surroundings.
3. Given the restaurant's good standing in the neighborhood, the incidental nature of the alcoholic beverage service, as well as the location of the restaurant, the expansion of the outdoor area for food and incidental alcoholic beverage service would not have a detrimental impact 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.
4. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project 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.

- B.** Alcoholic beverage service is also regulated by BMC 23.310.020(D) for Special Use Standards. This section requires the City to make all of the "Public Convenience or Necessity" findings if an existing establishment has an ABC license of the same type, other than beer and wine service incidental to food service, within a 1,000-foot radius of the project site. There is currently one other establishment within a 1,000-foot radius with a type 47 ABC license for service of beer, wine, and distilled spirits incidental to food service – Lama Beans at 1290 Sixth Street, one block north.

ZAB affirms all of the "Public Convenience or Necessity" findings under BMC Section 23.310.020(D), as follows:

1. *The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.*

This is an existing restaurant with incidental alcohol service which provides economic and cultural benefits to the West Berkeley community. The City will receive tax revenue from the alcoholic beverage sales. The proposed additional square footage will continue to provide these benefits while offering patrons alternate seating options.

2. *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.*

This is an existing restaurant with incidental alcohol service. The proposed additional outdoor seating will provide alternate seating options for patrons while maintaining consistent food and alcohol service throughout the restaurant. Alcoholic beverage service is typically a major part of a restaurant's revenue; to section off the new floor area to exclude alcohol service will not be economically beneficial.

3. *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

The Berkeley Police Department (BPD) analyzed police calls for service at this address over the past years and there were no calls for service related to alcohol.

4. *If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.*

The site is within 1,000 feet of Franklin Preschool when measured from a bird's-eye view, but over 1,000 feet when measured from a walking path. As a standard Condition of Approval, no visible advertising of alcohol beverages is allowed, and the business staff will check customers for proper identification to purchase alcohol. The effect of the proposed project will be minimal as the outdoor seating area is existing and will be enclosed by a wall.

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

In a letter dated January 29, 2024, BPD did not have any concerns with the increase in square footage because the business will operate on the same ABC License type, there were no calls for service related to alcohol, and the current ABC license is in good standing.

### III. OTHER FINDINGS FOR APPROVAL

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- A.** Pursuant to BMC Section 23.302.070(E)(9)(a), to approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
1. The project will be compatible with the surrounding uses and buildings, as there will be no change to the use of the building and the exterior improvements are minor in scale. As noted in Table 1, the adjacent uses are a bus yard, parking lot and warehouse. The restaurant is located in the vicinity of a warehouse, a construction product manufacturing facility (Cemex concrete plant), auto repair services, and a surface parking lot. The proposed expansion will be located next to the public right-of-way yet shielded by a wall as not to disrupt food service operations and uses in the area.
- B.** Pursuant to BMC Section 23.206.100(A) *All Manufacturing Districts*, to approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project is consistent with the purposes of the district, compatible with the surrounding uses and buildings, complies with the adopted West Berkeley Plan, meets any applicable performance standards for off-site impacts. The project complies for the following reasons:
1. Increasing the square footage of an outdoor area for food service and alcohol service at an existing restaurant is consistent with the purposes of the MU-LI Zoning District and West Berkeley Plan because the use is compatible with the surrounding mix of light industrial uses which contributes to West Berkeley's uniqueness – a key feature which distinguishes West Berkeley from other areas of Berkeley and the region.
  2. The proposed use is compatible with the surrounding uses and buildings because it contributes to the mix of uses in the area. It provides a service to the neighborhood which benefits Berkeley residents and businesses economically.
  3. The proposed use is consistent with the West Berkeley Plan because the project will provide a continued economic and land use mix, incorporating light manufacturing and retail uses which benefit Berkeley residents and businesses economically and promotes the varied character of the area.
  4. No additional performance standards for off-site impacts are applicable to this project. Parking is not required for expansions of existing uses within one-half mile of high-quality transit per BMC 23.322.020(D) Location Exemption. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.

- C.** Pursuant to BMC Section 23.206.100(B), the proposed project in the MU-LI Zoning District is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; designed in such a manner to be supportive of the industrial character of the district; and if the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.
1. The project is unlikely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings from manufacturing, wholesale trade or warehousing uses because the restaurant is an existing use established in 1981. The expansion of the outdoor area will allow the business to continually improve to adapt with the changing needs of the surroundings and economy. It provides a continued land use mix and promotes the varied character of the area while contributing to the economic viability of the light industrial area. The proposed project will not affect buildings with a manufacturing, wholesale trade, or warehousing use.
  2. The project is designed in such a manner to be supportive of the industrial character of the district because there will be minor changes to the exterior of the building. The project would maintain the existing building façade and fence off the front patio area with a wall which will blend in with the existing architecture and approved under building permit B2022-04940.
  3. The site is not split between MU-LI district and the C-W district. All changes to the exterior of the building will be subject to Design Review to insure the design is supportive of the light industrial character of the area.

#### IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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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.
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 re-establish 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 comply 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. **Hold Harmless.** The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

**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 #

**11. Building Permit Required.** Use of the expanded outdoor dining must comply with all other applicable City ordinances and regulations and requires a building permit review. The applicant shall submit revisions to B2022-04940, or a new building permit if that one has been completed, prior to commencing the use of the new outdoor dining area.

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

**12. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.

**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. Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527).** A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: [City of Berkeley Community GIS Portal \(arcgis.com\)](#)
- B.** Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.

**C. Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.

**D. Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
  - a. procedures to manage odors, dust and other potential nuisance conditions expected during development;
  - b. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
  - c. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

**E. Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- i. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.
- 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. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)
  - The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.
  - 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.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

- F. Hazardous Materials Business Plan.** A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

- G. Petroleum Storage.** An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- a. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

### **Prior to Issuance of Any Building (Construction) Permit**

**14. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at [jheath@berkeleyca.gov](mailto:jheath@berkeleyca.gov).

### **Prior to Demolition or Start of Construction:**

**15. Construction/No Parking Permits.** Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood.

### **During Construction:**

**16. 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.

### **17. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-**

Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.
- H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- 18. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
- C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.

- a. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

**19. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

**20. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)

**21. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

- 22. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A.** The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B.** Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C.** Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
  - D.** Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
  - E.** All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
  - F.** All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
  - G.** All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
  - H.** Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- I. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- J. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
- K. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- L. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 23. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 24. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 25. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 26. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 27. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

- 28. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
- 29. Public Works / Building and Safety.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

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- 30. 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.
- 31.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated September 29, 2023.

**At All Times:**

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- 32. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
- 33. 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.
- 34. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 35. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 36. Guaranteed Ride Home.** If qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the "Guarantee Ride Home" program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager
- 37. Transit Subsidy Condition.** If 10 or more employees, the business operator 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.

- 38. 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.
- 39.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

### **ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)**

- 40.** The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
- 41.** Alcoholic beverage service shall be “incidental” to the primary food service use, as defined in Zoning Ordinance 23.502. 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.
- 42.** Alcohol beverage service shall be only be allowed as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement as determined and required by the ABC.
- 43.** The service of alcohol shall be limited to normal meal hours (per ABC) during the restaurant’s hours of operation. Patrons may only purchase food or finish drinks already purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
- 44.** During operating hours, 100 percent of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- 45.** The sale of alcoholic beverages for consumption off the premises is prohibited.
- 46.** There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
- 47.** 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.

48. 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.
49. 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.
50. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
51. 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.
52. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
53. 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.
54. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
55. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
56. At no time shall the operator rent the restaurant space to a third-party promoter.
57. 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.
58. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.

PICANTE RESTAURANT RENOVATION  
1328 SIXTH STREET  
BERKELEY  
CA 94710  
APN # 59-2348-21-1

2022 OCT 19 BLDG PERMIT  
2023 FEB 24 PLAN CHECK RESP 01  
2023 APR 14 PLAN CHECK RESP 02



2023 APR 14

FLOOR PLAN  
CONSTRUCTION

A2.1

GENERAL FLOOR PLAN NOTES

- REVIEW ALL (H) EQUIPMENT DIMENSIONS & FLOOR CLEARANCES WITH ARCHITECT PRIOR TO FINAL FRAMING.
- REVIEW ALL ROUGH-IN ELECTRICAL & PLUMBING PRIOR TO FINAL INSTALLATION & DRY WALL SHEATHING.
- WALL DIMENSIONS ARE TAKEN FROM FACE-OF-STUD TO FACE-OF-STUD. VERIFY W/ DETAILS FOR FINISH MATERIAL & THICKNESS, ETC.
- VERIFY ALL EQUIPMENT CLEARANCES W/ ARCHITECT PRIOR TO WALL FRAMING.
- WALL ROUGH FRAMING LOCATIONS DENOTED BY [ ] BEFORE THE DIMENSION CALLOUTS; IN INCHES.  
I.E.: [ ]
- MIN. ACCESSIBILITY FLOOR CLEARANCE - 60" DIAMETER
- MIN. ACCESSIBILITY FLOOR CLEARANCE - 30" x 48"
- MIN. ACCESSIBILITY FLOOR CLEARANCE - 60" SQUARE
- MIN. ACCESSIBILITY PATH OF TRAVEL CLEARANCE - 3'-8" [44]
- ALL FRAMING MATERIAL SHALL BE METAL STUD FRAMING
- REVIEW ALL FINISHES & COLORS WITH ARCHITECT PRIOR TO FINAL INSTALLATION.
- STORE ALL PRODUCTS MIN. 6" OFF THE FLOOR ON NSF APPROVED SHELVING.
- ALL FOOD CONTAINERS TO BE NSF APPROVED OR EQUAL APPROVED FOOD-GRADE CONTAINERS. ALL FOOD CONTAINERS FINIS TO BE LABELED AS TO CONTENTS.
- SHATTERPROOF COVERS TO BE INSTALLED ON ALL LIGHT FIXTURES IN THE KITCHEN, FOOD PREP, AND STORAGE AREAS.
- CABINETS GAPS BETWEEN WALL AND HAND SINKS, COUNTERTOPS, BACK SPLASHES, ETC. INSTALLED BELOW EXISTING GYP BOARD CEILING TO BE PAINTED OUT TO MATCH ADJACENT CEILING COLOR. IN ALL KITCHEN AND FOOD PREP AREAS - SMOOTH, WASHABLE, CLEANABLE, LIGHT COLORED WITH SEMI-GLOSS PAINT PER HEALTH DEPARTMENT REQUIREMENTS.
- REFER TO SHEET A0.1 FOR ACCESSIBILITY NOTES AND DETAILS
- VERIFY LOCATION AND CONDITION OF EXISTING WALLS PRIOR TO CONSTRUCTION. NOTIFY ARCHITECT OF ANY DISCREPANCIES PRIOR TO WORK PROCEEDING.
- ALL PENETRATIONS MUST BE SEALED INCLUDING RECESSED LIGHTING CANS, ELECTRICAL BOXES, PIPES, ETC.. BOXES SHALL HAVE ELECTRICAL BOX PROVIDED COMPLETELY AROUND THE BOXES
- ALL JOIST HD STUD CAVITIES SHALL BE FILLED WITH FIBERGLASS BATT. SIX INCH THICK FOR THE STUDS, MIN R-19, AND NINE INCH THICK FOR THE JOIST. TWO LAYERS OF BATT ARE ACCEPTABLE IF NEEDED.
- REFER TO FS DWGS FOR BACK OF HOUSE LAYOUT, FINISHES, ETC.
- ALL EXTERIOR WINDOWS TO REMAIN
- CEILING BELOW 8' OCCUPANCIES TO BE 2-HOURS RATED
- PERIMETER WALLS ADJACENT & OCCUPANCIES TO BE 2-HOURS RATED
- WALLS AT PROPERTY LINES MUST BE 1-HOUR RATED ASSEMBLY
- INTERIOR FINISHES MUST COMPLY WITH CFC 803

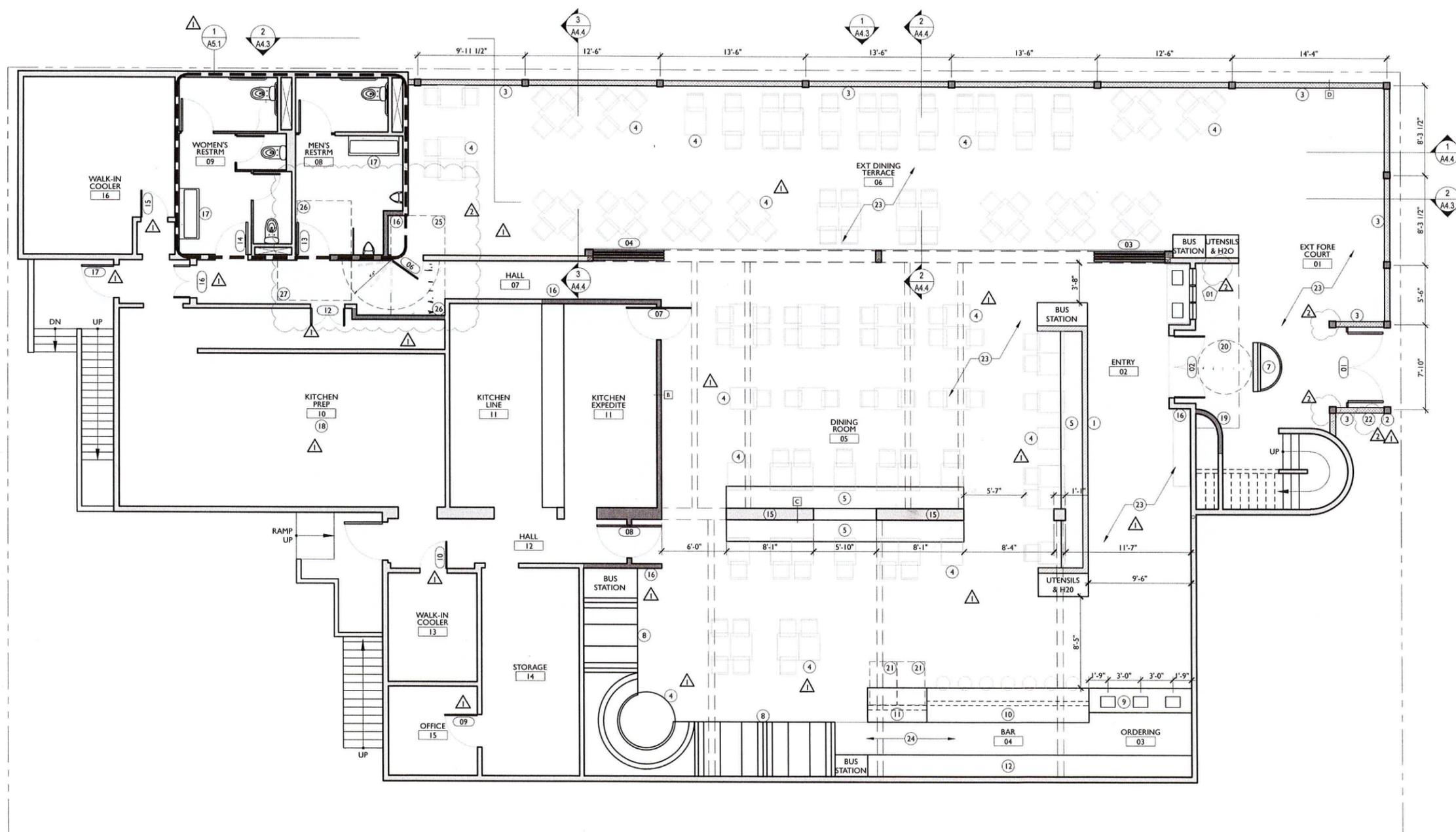
FLOOR PLAN KEYNOTES

- (N) PARTIAL HEIGHT WALL, SEE INT ELEV
- (N) VD COLUMN, TYP OF 14, SSD
- (N) 6 FT HIGH STUCCO WALL, SEE EXT ELEV
- DESIGNATED ACCESSIBLE SEAT (NOT LESS THAN 5% OF TOTAL SEATS) W/ 30" x 48" ACCESSIBLE FLOOR AREA, SEE A0.1 FOR DETAILS
- (N) BUILT-IN BANQUETTE
- NOT USED
- (N) FOUNTAIN, SEE A0.0 / DEFERRED SUBMITTALS
- (N) BUILT-IN BOOTH SEATING
- (N) POS COUNTER
- (N) BAR COUNTERTOP
- (N) ACCESSIBLE BAR COUNTER, LENGTH 60" MIN
- (N) BACK BAR COUNTERTOP
- (N) COLUMN, TYP OF 3, SSD
- (N) BEAM, TYP OF 3, SSD
- PORTION OF EXISTING WALL TO REMAIN
- CONFIRM OR PROVIDE CLASS A FIRE EXTINGUISHERS IN ACCORDANCE W/ CFC 906.3, LOCATED WITHIN 75 FT OF TRAVEL, NEAR EXITS, OR ALONG EXIT PATHS.
- (N) LAVATORY SINK & FAUCETS. FAUCETS SHALL HAVE A MAXIMUM FLOW RATE OF 0.5 GPM AT 60 PSI.
- CONFIRM OR PROVIDE ONE CLASS K FIRE EXTINGUISHER IN THE KITCHEN
- EXTEND EXIST UTIL CLOSTO TO INCLUDE METERS
- ACCESSIBLE 5 FT TURNING RADIUS
- ACCESSIBLE 30" x 48" CLR SPACE AT LAV / CNTR
- INSTALL NEW KNOX BOX WITHIN 6 FT OF FINISH GRADE, VERIFY LOCATION W/ OWNER & FIRE INSPECTOR PRIOR
- (N) POLISHED CONC FLOOR
- (N) ECOGRIP FLOOR OI CONC
- ACCESSIBLE DOOR CLEARANCE, LATCH APPROACH, PUSH SIDE WITH CLOSER
- ACCESSIBLE DOOR CLEARANCE, FRONT APPROACH, PULL SIDE WITH CLOSER
- ACCESSIBLE DOOR CLEARANCE, BOTH LATCH AND HINGE APPROACH, PUSH SIDE WITH CLOSER

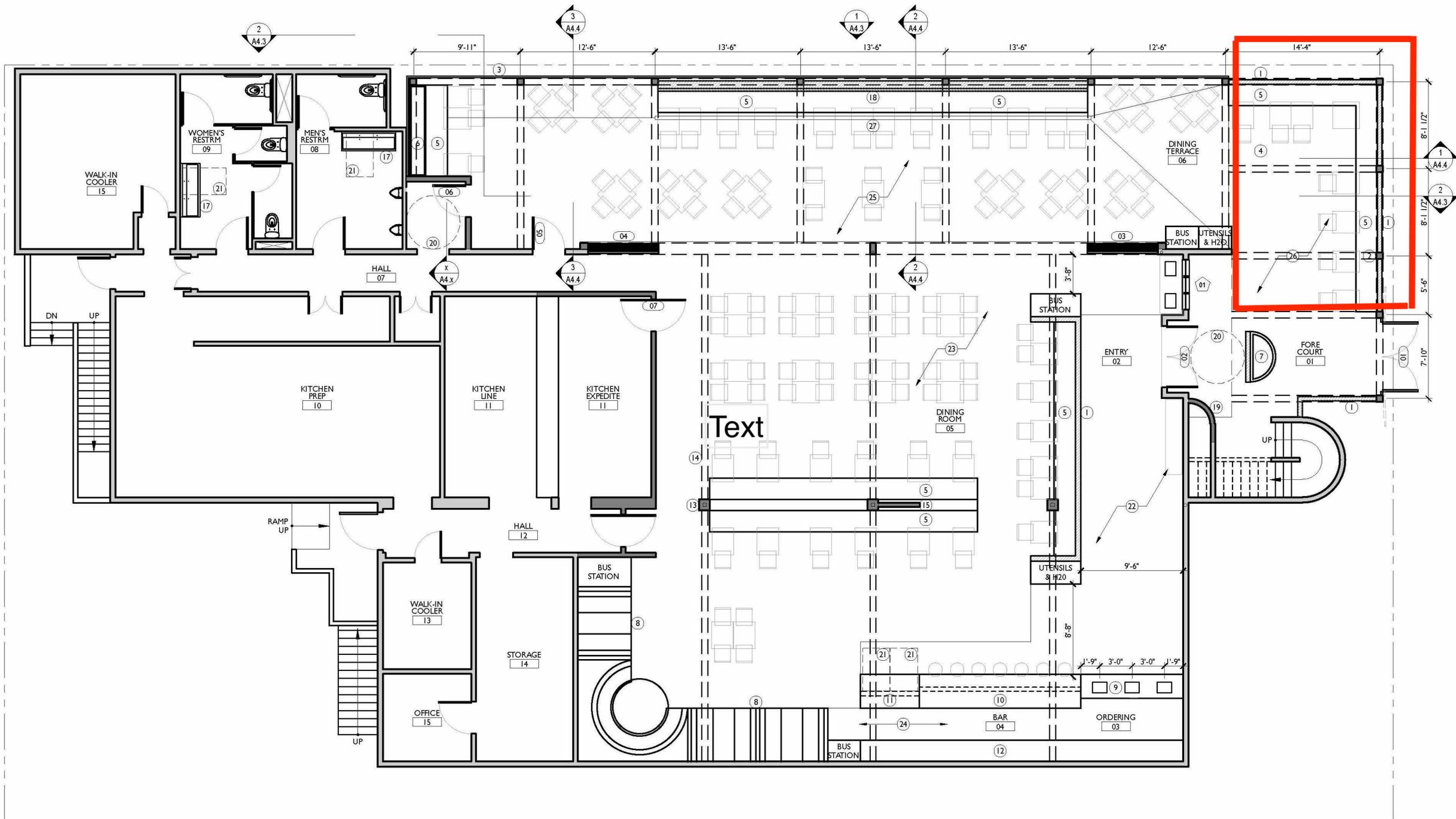
LEGEND

SYMBOL	DESCRIPTION
	2x WALL EXISTING
	2x WALL NEW
	NEW 2x PARTIAL-HEIGHT EXTERIOR WALL, SEE EXT ELEV
	NEW 2x PARTIAL-HEIGHT INTERIOR WALL, SEE INT ELEV
	WALL TYPE, SEE A8.1 FOR DETAIL

ALL WALLS TO BE 2x4 STUDS, 16" OC, PTD GWB, U.O.N.



1 FLOOR PLAN CONSTRUCTION  
 3/16" = 1'-0" @ 36x24 (200%) | 3/32" = 1'-0" @ 17x11 (100%)



1 FLOOR PLAN CONSTRUCTION  
3/16" = 1'-0" @ 36x24 (200%) | 3/32" = 1'-0" @ 17x11 (100%)



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Berkeley, CA 94703  
510.529.9240 | andrew@andrewlee.com

PLAN REVIEW ACCEPTANCE

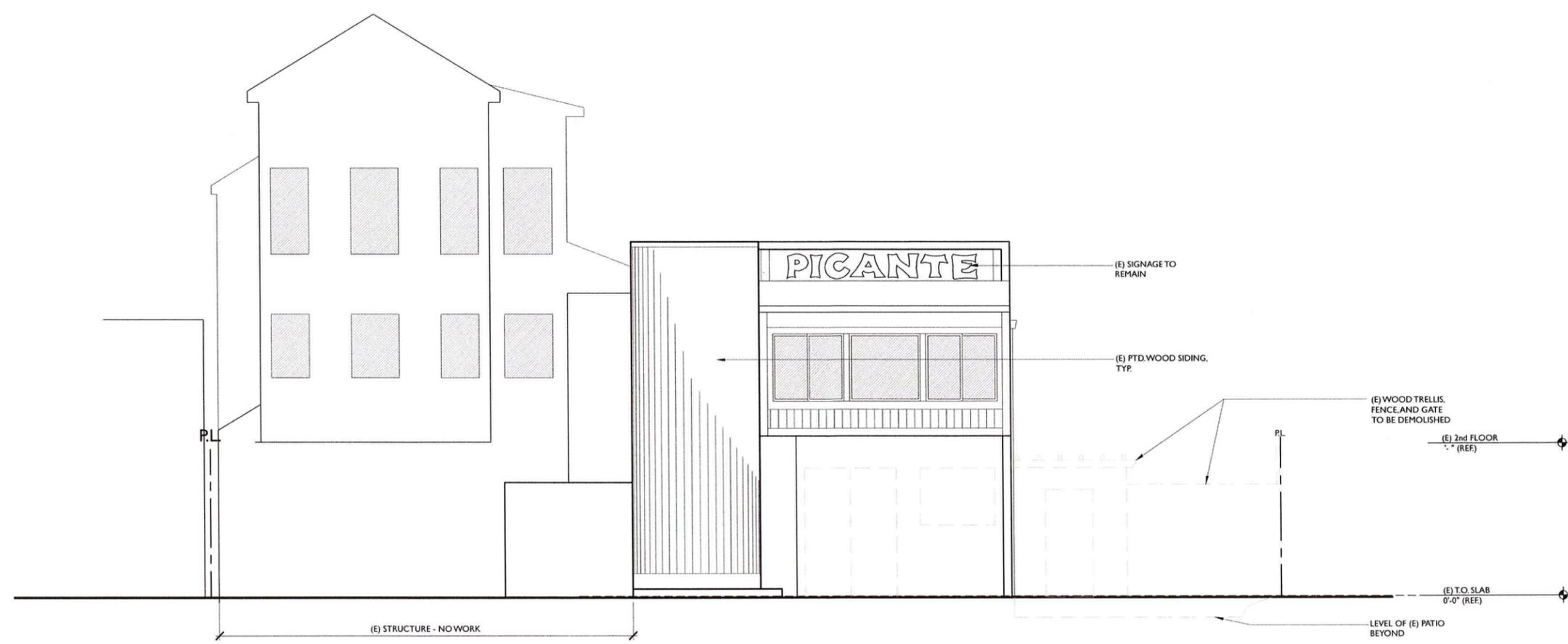
May 01 2023

WEST COAST CODE CONSULTANTS

PLANNING & DEVELOPMENT DEPARTMENT  
BUILDING & SAFETY DIVISION  
May 10, 2023  
REVIEWED FOR  
CODE COMPLIANCE

PICANTE RESTAURANT RENOVATION  
1328 SIXTH STREET  
BERKELEY  
CA 94710  
APN # 59-2348-21-1

2022 OCT 19 BLDG PERMIT  
2023 FEB 24 PLAN CHECK RESP 01  
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1 EAST ELEVATION - EXISTING / DEMOLITION  
1/4" = 1'-0" @ 36x24 | 1/8" = 1'-0" @ 17x11



2023 APR 14

EXTERIOR ELEVATIONS  
EXISTING / DEMO

A4.0

PICANTE RESTAURANT RENOVATION  
1328 SIXTH STREET  
BERKELEY  
CA 94710  
APN # 59-2348-21-1

2022 OCT 19 BLDG PERMIT  
2023 FEB 24 PLAN CHECK RESP 01  
2023 APR 14 PLAN CHECK RESP 02



1 EAST ELEVATION - PROPOSED  
1/4" = 1'-0" @ 36x24 | 1/8" = 1'-0" @ 17x11



2023 APR 14

EXTERIOR  
ELEVATIONS  
PROPOSED

A4.2



# 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

### 1328 Sixth Street

**Use Permit #ZP2023-0137 to modify UP#A2333/MOD and UP#A9990 to add 315 square feet to the existing outdoor dining area with alcoholic beverage service at an existing full-service restaurant in the Mixed Use - Light Industrial Zoning District.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

**When:** Thursday, March 14, 2024, 7:00 pm

**Where:** Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.**

*For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.*

*Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.*

#### A. Land Use Designations:

- General Plan: M - Manufacturing
- Zoning: MU-LI – Mixed Use-Light Industrial District

#### B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.324.040(A) to expand a non-conforming use (outdoor seating in MU-LI);

- Use Permit pursuant to BMC Section 23.310.020(B) to expand the floor area of an establishment that serves alcoholic beverages; and
- Use Permit pursuant to BMC Section 23.302.070(E)(9) to expand a food service establishment in the MU-LI.

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

**D. Parties Involved:**

- Applicant Erica Edgmon, 1328 Sixth Street, Berkeley, CA
- Property Owner Jim Maser, 1328 Sixth Street, Berkeley, CA

**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, Vicky Schlepp, at (510) 981-7422 or [vschlepp@berkeleyca.gov](mailto:vschlepp@berkeleyca.gov).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov).

**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.

**Written Comments, 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@berkeleyca.gov](mailto:zab@berkeleyca.gov). 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 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.



#### **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:**

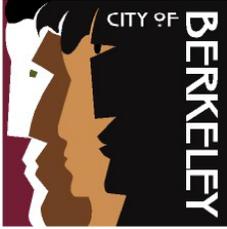
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

#### **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 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 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 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.





Police Department

**January 29th, 2024**

TO: Victoria Schlepp, Assistant Planner, Planning and Development

**Re: 1328 Sixth St, Picante Restaurant**

Dear Ms. Schlepp,

This letter is in response to your request to review a proposed expansion of the square footage of the restaurant at 1328 Sixth St.

An analysis of police service calls for service at this address over the past years has yielded several calls for service. However, there do not appear to be any calls for service that appear to be related to their safes of alcohol, and as the business is going to continue to operate under the ABC license they currently hold and are not looking to change licenses BPD doesn't have any concerns with the increase in square footage. Also, the business is in good standing with their current ABC alcohol permit.

Sincerely,

Kevin Kleppe

Sergeant, Community Services Bureau