

RESOLUTION NO. - N.S.

ESTABLISHING PERFORMANCE STANDARDS FOR USE OF CULTURAL SPACE AT GAIA BUILDING, 2120 ALLSTON WAY

WHEREAS, when the City approved a Use Permit for the Gaia Building, at 2120 Allston Way, in 1998, the applicant, received two additional residential stories in exchange for provision of a 10,000 square foot cultural facility, consisting of space on the ground floor and a mezzanine (the "Cultural Space"); and

WHEREAS, at the time the building was approved the intended use of the Cultural Space was for the Gaia Bookstore; and

WHEREAS, the Gaia Bookstore went bankrupt and ceased to operate before the building was finished; and

WHEREAS, In April 2002, the Zoning Adjustments Board approved a plan that included a café and performance spaces on the main floor and arts-related office uses on the mezzanine, of which one-half were required to be for non-profit organizations supporting arts and/or education; and

WHEREAS the café and the remainder of the Cultural Space are under different management and control, and the area other than the café is known as the Gaia Arts Center; and

WHEREAS, letters between the applicant and City staff in April, May, and June 2003, clarified and refined the requirements for cultural uses; and

WHEREAS, on April 25, 2006, the City Council accepted the 2003 letters as describing uses permissible under the applicable Use Permits and the required frequency of such uses, and directed staff to return with specific proposals for implementation for Council consideration; and

WHEREAS, staff has met with the applicant and the operator of the Gaia Arts Center and conducted additional research, and has now returned with specific proposals for implementation; and

WHEREAS, the City Council has considered these specific proposals and believes they are workable.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley as follows:

1. The Council accepts the June 13, 2006, letter of Patrick Kennedy, as clarified by the July 6, 2006, letter from Wendy Cosin, as a workable implementation strategy consistent with its action of April 25, 2006. Collectively, the commitments set

Approved Resolution submitted by Councilmember Marin

forth in these letters constitute the Performance Standard that is and will be applicable to the Gaia Art Center under the applicable Use Permits.

2. In general, the following shall be considered a "Cultural Use" for purposes of Condition No. 10 of Use Permit Modification #02-7000004 and in connection with this Resolution, and uses within these categories that are open to the public need not be individually approved as cultural by staff:

- Live performances of music or dance, live theatrical productions, literature readings, or similar types of live performance.
- Film showings, other than regular use of the Gaia Arts Center as a movie theater for first-run films that are commercial in nature.
- Display of sculpture, painting, or other graphic arts when the space is open to the public.
- Educational uses related to any of the above.

In addition, other uses specified in the 2003 letters, such as a wide variety of art-related activities, lectures, benefits and receptions for culture-related nonprofit organizations, and other similar uses as may be determined by the City, will be considered Cultural Uses if so determined by City staff.

3. In addition, there may be marginal situations that require the exercise of some judgment by the operator and staff as to whether a particular proposed use is a Cultural Use. Accordingly, the Council provides the following guidance for the operator and staff in making such determinations.
- The fact that a use may not be open to the public (for instance, an invitation only master class for musicians) does not necessarily prevent it from being a Cultural Use. However, the purpose behind the General Plan policy that grants a development bonus for providing cultural space, as well as the Council's intention in approving the Gaia Building with such a bonus, was to provide opportunities for Berkeley residents to enjoy cultural opportunities. Therefore, the fact that an event is not open to the public shall mitigate against its being considered a cultural event.
 - The fact that there is a charge to attend an event or that food is served is irrelevant.
 - Religious events, while permissible, shall not be considered Cultural Uses.
4. It is not the Council's intention to regulate the price that is charged for cultural use of the Gaia Arts Center. However, the operator of the Gaia Arts Center not only leases out the Cultural Space for Cultural Uses, but also rents it out for other uses that generate greater income, resulting in a perceived conflict of interest. Therefore, it is incumbent upon the City to ensure that Cultural Uses have the priority that is intended. The Council has considered the information presented to it concerning the discounted price charged to the existing lessee (the Marsh Theater), market rates for comparable cultural uses in the area, as well as non-cultural uses of the sort that use or might use the Gaia Arts Center. Based on its review of these rates, it is the Council's expectation, as well as its interpretation of

the applicable Use Permits, that the prices charged for cultural uses of the Gaia Arts Center will be adjusted as necessary to comply with the Performance Standard

5. The operator of the Gaia Arts Center shall report in December 2006, June and December of 2007, and every December thereafter,, on a form provided by City staff, as to compliance with the Performance Standard. Staff shall report the operator's compliance to the Council annually in January, beginning in 2007. The first report shall be limited to compliance for the period of September 19th (the date on which a final certificate of occupancy was issued) through December 31st. For subsequent years, compliance shall be judged based on the calendar year. Occasions on which a cultural user has reserved the space but not provided a cultural event through no fault of the operator shall be counted as a cultural event for purposes of compliance analysis.
6. In addition, upon three days notice, the operator of the Gaia Arts Center shall allow City staff to review (but not retain copies of) any future leases for Cultural Uses, to ensure continuing compliance with the Performance Standards.
7. The City Council supports and encourages the use of the Gaia Arts Center for the full range of permitted Cultural Uses, consistent with, and as a way to implement, Policy LU-19 of the General Plan.

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