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OFFICE OF THE CITY CLERK
CITY OF BERKELEY

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 Use Permit modification allowing performance spaces on the main floor and office uses on the mezzanine, of which one-half were required to be for non-profit organizations supporting arts and/or education; and

WHEREAS, a second Use Permit Modification was approved by the Zoning Adjustments Board in January 2003 that allowed one of the previously approved performance spaces on the first floor to be used as a café with live entertainment, food service, and incidental sale of alcoholic beverages; and

WHEREAS, as a result of this second Use Permit Modification, the café and the remainder of the Cultural Space are under different management and control (the area other than the café is referred to herein as the Gaia Arts Center); and

WHEREAS, despite the first Use Permit Modification, the owner was not able to reach agreement with an arts organization to occupy the performance space because they were unwilling to make the investment necessary to improve the former bookstore space so that it could be used as performance space, and thus it remained unoccupied; and

WHEREAS, the owner decided not to move forward with the office uses as approved by the first Use Permit Modification; and

WHEREAS, the owner brought potential partners for the cultural venue to City staff to explore what could be done for the project to move forward; and

WHEREAS, the owner offered to make the investment in the performance space himself if he could recoup this investment by being permitted to change the mezzanine from office to "all kinds of cultural uses and events" that would include "wide variety of arts-related activity, music concerts, lectures, films, receptions, and cultural and incidental uses appropriate for the space"; and

WHEREAS, letters were exchanged about this proposal between City staff and a representative of the owner in April, May, and June 2003, which clarified and refined the requirements for cultural uses; and

WHEREAS, in these letters the owner and his representative proposed that the performance space on the first floor would be used a minimum of 30% of the days of the year time for cultural performances or events; and

WHEREAS, the change of use of the mezzanine from offices to actual cultural uses with arts-related activities programmed 50% of the time would expand the space occupied by cultural uses and thus was consistent with and an expansion of cultural uses; and

WHEREAS, City staff approved the final proposal made by the owner and his representative as consistent with the cultural uses approved in the 2002 Use Permit Modification and with a condition thereof that authorized staff to approve groups leasing all or part of the Cultural Space, because in staff's opinion active cultural uses were more consistent with the intent of the original Use Permit and the underlying General Plan policy than were offices; and

WHEREAS, since August of 2005, the predominant use of the Cultural Space has been for Cultural Uses;

WHEREAS, on April 25, 2006, the City Council approved a motion that Carol Barrett had the authority to agree in her June 6, 2003 letter that the required performance (theater) area had to have a minimum of 30% of the time devoted to performances and that this requirement must be construed to also require additional preparation time such as set-up and rehearsal time for such performances; and a motion affirming that non-cultural uses which are incidental to and compatible with the cultural uses are permissible as long as the cultural performances have priority in scheduling, thereby accepting 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, on June 13, 2006, Patrick Kennedy, on behalf of Panoramic Interests, wrote the City proposing that the Council's April 25, 2006, action be implemented as follows:

- A. The theater space on the first floor will be reserved for actual performances or events 30% of the days of the year (equivalent to 109 days per year), of which

at least 70% (77 days) will be on weekends (Fridays, Saturday and Sundays). This 30% will *not* include rehearsal or set up time.

- B. Other weekend dates will also be reserved for cultural uses such that a minimum of 51% of all weekend dates will be reserved for cultural uses. This is equivalent to at least 80 weekend dates.
- C. On all other days, cultural users will be able to book one month earlier than other potential users.
- D. In the remainder of the ground floor and mezzanine, cultural related events will be programmed 15 days per month, on average; and

WHEREAS, the June 13, 2006 letter also states:

“The Gaia Arts Center will be mindful of the limited budget of many cultural users, and make special efforts to accommodate them throughout the year. (E.g. The Marsh Theater just had a three week run of Stephanie Weisman’s “Aphrodisia” at no charge.)”; and

WHEREAS, on July 6, 2006, Wendy Cosin replied to this letter, clarifying that any non-cultural use of the Gaia Arts Center would be allowable provided that the performance standards set forth in the June 13, 2006, letter were met and that cultural performances have priority in scheduling; and

WHEREAS, the Council has received complaints that certain users of the Cultural Space have placed “sandwich signs” or other freestanding signs on the sidewalk in front of the Gaia Arts Center despite the fact that such signs are already prohibited by the City’s Sign Ordinance (BMC Title 20); and

WHEREAS, the operator of the Gaia Arts Center has promised not to allow such signs in the future; and

WHEREAS, the operator of the Gaia Arts Center has represented that he wants the Gaia Arts Center to be a desirable and often-used venue for Cultural Uses in Downtown Berkeley and will make a good faith effort to implement this resolution in a manner that accomplishes this goal, consistent with the Council’s intent; and

WHEREAS, the City Council has considered these specific proposals and commitments and believes they form the basis for a workable approach to the use of the Gaia Arts Center, but retains the ability to revisit them if they prove to be ineffective to ensure that the Cultural Space is devoted to Cultural Uses as set forth in this resolution or are given priority.

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

1.
 - a. The Council accepts the June 13, 2006, letter of Patrick Kennedy, as clarified by the July 6, 2006, letter from Wendy Cosin and as further modified herein, as a partially workable implementation strategy consistent with its action of April 25, 2006. Collectively, the commitments set forth in these letters constitute some of the minimum Performance Standard that will be applicable to the Gaia Art Center under the applicable Use Permits.
 - b. As the Council determined on April 25, 2006, the Use Permits also require that Cultural Uses have priority over other uses. The operator of the Gaia Arts Center has proposed that this priority requirement be met in two ways.
 1. First, the theater space on the ground floor shall be reserved for cultural uses 51% of the weekend dates annually plus rehearsal and setup time.
 2. Second, the operator has offered that Cultural Uses will have the opportunity to reserve the Cultural Space before other uses. Specifically, any or all of the Cultural Space may be reserved for Cultural Uses as early as 18 months in advance of the proposed use, while non-cultural uses may not book any of the space more than 12 months prior to the planned use.
 - c. While the Council recognizes that there is existing unsatisfied demand for cultural space in Berkeley, it also recognizes that circumstances change, and that is impracticable to adopt an inflexible definition of "priority" in this context. Accordingly, the Council accepts the operator's proposals as set forth above.
2.
 - a. 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:
 - 1) Live performances of music or dance (including rehearsals and workshops), live theatrical productions, literature readings, spoken performances, or similar types of live performance.
 - 2) Film showings, other than regular use of the Gaia Arts Center as a movie theater for first-run films that are commercial in nature, as well as lectures and workshops about film or photography.
 - 3) Display of sculpture, painting, mixed-media or other graphic arts when the space is open to the public.
 - 4) Educational uses related to any of the above.
 - b. 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.
 - c. In general, the following uses are allowed (assuming the Performance Standards are met) but shall not be considered Cultural Uses:
 - 1) Religious services and related religious events.

- 2) Non-Cultural private parties and receptions and similar functions that are not open to the general public, even for a fee.
 - 3) Uses that would otherwise be considered Cultural Uses that are presented at inappropriate times, such as beginning after 1:00 a.m., or for unreasonably brief periods such that members of the public do not have an opportunity to attend.
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.
 - a. 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.
 - b. The fact that there is a charge to attend an event or that food is served is irrelevant.
4. Consistent with, and subject to, the requirement that Cultural Uses be given that priority described herein, other permissible uses shall be subject to the following limitations.
 - a. Provided that current Cultural Uses are advertised every day, and provided further that religious services are only advertised on Sundays before 11:00 a.m., the operator may advertise other allowed uses on its marquee.
 - b. Any person who presents amplified music in any part of the Cultural Space shall maintain at all such times an appropriate type of decibel meter or other sound monitoring device as specified by the City, that records decibel levels in a manner that allows appropriate analysis by the City.
5. 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, and in particular has also considered the representation in the June 13, 2006 letter that is quoted above. 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.

6. The operator of the Gaia Arts Center shall report in by the first day of June and December of 2007, and the first day of 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. 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.
7. 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 concerning the use of the Cultural Uses, as well as any marketing plans for the Cultural Space, to ensure continuing compliance with the Performance Standards.
8. 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.