



Office of the City Manager

## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date:** April 25, 2017

**Item Number:** 53

**Item Description:** ZAB Appeal: 2902 Adeline Street

**Submitted by:** Carol Johnson, Director, Planning and Development Dept.

This supplemental agenda material includes:

1. A Resolution for approval of the revised project;
2. A corrected track changes version of Findings and Conditions for the revised project; and
3. The correct Findings and Conditions for the original project, as presented to the ZAB.

RESOLUTION NO. ##,###-N.S.

APPROVING USE PERMIT NO. ZP2015-0177 TO: (1) DEMOLISH ONE SINGLE-FAMILY DWELLING AND ONE MIXED USE BUILDING AT 2902 AND 2908 ADELINE STREET AND 1946 RUSSELL STREET; AND (2) CONSTRUCT A 6-STORY, MIXED-USE BUILDING WITH 4,119 SQ. FT. OF COMMERCIAL SPACE (INCLUDING 1 COMMERCIAL UNIT AND 4 LIVE/WORK UNITS) AND 52 DWELLING UNITS (INCLUDING 4 UNITS AVAILABLE TO VERY LOW INCOME HOUSEHOLDS, 4 UNITS AVAILABLE TO LOW INCOME HOUSEHOLDS, AND 2 UNITS AVAILABLE TO MODERATE INCOME HOUSEHOLDS)

WHEREAS, on August 17, 2015, REALTEX Apartments, LLC (“applicant”) filed an application for a Use Permit to redevelop 3 parcels at 2902 and 2908 Adeline Street and 1946 Russell Street (approximately 14,065 square feet total), subsequently revised to include the demolition of one single-family dwelling and one mixed use (commercial and residential) building; and the construction of a 6-story, mixed-use building with 4,119 sq. ft. of commercial space (including 1 commercial unit and 4 live/work units), and 52 dwelling units (including 4 units available to very low income households (50% AMI), 4 units available to low income households (80% AMI), and 2 units available to moderate income households (120% AMI)), and payment of an Affordable Housing Mitigation Fee of \$136,000; and

WHEREAS, on February 25, 2016, at a duly noticed meeting, the applicant presented a preview of the project to the Zoning Adjustments Board (ZAB) and the ZAB provided initial comments; and

WHEREAS, on April 21, 2016, at a duly noticed meeting, the applicant presented a preview of the project to the Design Review Committee and the DRC provided initial comments; and

WHEREAS, on August 18, 2016, at a duly noticed meeting, the DRC held a public meeting, heard public testimony, discussed the project, and continued the project with design recommendations; and

WHEREAS, on September 15, 2016, at a duly noticed meeting, the Design Review Committee held a public meeting, heard public testimony, discussed the revised project, and gave it a favorable recommendation; and

WHEREAS, on September 30, 2016, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15332 of the CEQA Guidelines; and

WHEREAS, on October 12, 2016, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on October 27, 2016, the ZAB held a public hearing in accordance with BMC

Section 23B.32.030, and approved the project; and

WHEREAS, on November 1, 2016, staff issued the notice of the ZAB decision; and

WHEREAS, on November 15, 2016, Robert Lauriston filed an appeal of the ZAB decision with the City Clerk on behalf of himself and 29 other signatories; and

WHEREAS, on March 7, 2017, the Council held a public hearing in accordance with BMC Section 23B.32.060 and continued the item until April 4, 2017; and

WHEREAS, on April 4, 2017, the Council continued the item to April 25, 2017 to adequately notice and hear a revised proposal; and

WHEREAS, on April 25, 2017, the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby adopts the revised findings in Exhibit A and approves Use Permit No. ZP2015-0177, and adopts the conditions in Exhibit A and the project plans in Exhibit B.

Exhibits

A: Revised Findings and Conditions

B: Project Plans dated March 30, 2017

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

~~OCTOBER 27, 2016~~ APRIL 25, 2017

### 2902 Adeline Street

Use Permit #ZP2015-0177 to redevelop 3 parcels at 2902 and 2908 Adeline Street and 1946 Russell Street (approximately 14,065 square feet total), which includes the demolition of one single-family dwelling and one mixed-use (commercial and residential) structure; and the construction of a 6-story, mixed-use building with 4,119 sq. ft. of commercial space including 1 commercial unit, 4 live/work units, and ~~50-52~~ dwelling units, including 2 qualifying units available to very low income households and a commitment to provide the following additional below market rate 2 additional units on site: 2 additional units available to very low income households, 4 available to low income households, and 2 available to moderate income households. The project would include 56 bicycle spaces and stacked parking for 24 vehicles.

#### PERMITS REQUIRED

- Use Permit for a Mixed Use Development (Residential/Commercial) of 5,000 sq. ft. or more in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit for Live/Work units in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit to construct new dwelling units in the R-4 District, under BMC Section 23D.40.030
- Use Permit for demolition of a non-residential building, under BMC Section 23C.08.050.A;
- Use Permit to demolish a building with one or more dwelling units, under BMC Section 23C.08.010.B;
- Use Permit to exceed the maximum height requirement of 36 feet, 3 stories for mixed use buildings in the C-SA District, under BMC Section 23E.52.070.D.7;
- Use Permit to exceed the 35 feet, 3 story height limit in the R-4 District, under BMC Section 23D.40.070.C;
- Use Permit to exceed 40% lot coverage in the C-SA District, under BMC Section 23E.52.070.D.7;
- Use Permit to modify the front setback in the C-SA District to less than the 15-foot minimum, under BMC Section 23E.52.070.D.7;
- Use Permit to reduce the amount of Useable Open Space, under BMC Section 23E.52.070.D.7;
- Use Permit to modify the street side setback in the C-SA District to less than the 6 to 15-foot minimum range, under BMC Section 23E.52.070.D.7; and
- Use Permit to allow for a reduction in the required off-street parking, under BMC Section 23E.52.070.D.7.

#### WAIVER/MODIFICATIONS PURSUANT TO STATE DENSITY BONUS LAW

- To increase the maximum height such that the project would not comply with the 3-story, 35 and 36 foot height limits in the R-4 District and C-SA District. (Required if Use Permit for additional height is not approved.)

## **CONCESSION PURSUANT TO STATE DENSITY BONUS LAW**

- To exceed the maximum 4.0 Floor Area Ratio (FAR) in the C-SA District to be 4.~~5~~6 FAR. (Required if Use Permit for additional height is approved.)

## **I. CEQA FINDINGS**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”). The project meets all of the requirements of this exemption, as follows:
  - a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
  - b. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
  - c. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
  - d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions will address potential impacts related to traffic, noise, air quality, and water quality.
  - e. The site is already served by required utilities and public services, which will also adequately serve the project.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

## **II. FINDINGS FOR APPROVAL**

1. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

**HEIGHT/MASSING/NEIGHBORHOOD COMPATIBILITY** -- The City finds the height and massing is compatible with the surrounding neighborhood for the following reasons:

- A. The proposed project is uniquely situated at the southeast corner of one of the broadest intersections in the City. Although the Right-of-Way (ROW) across Russell Street is a standard 60 feet, the ROW across Adeline Street at Russell is thrice that at 180 feet, and the distance diagonally to the northwest corner is 268 feet. The ROW along this section of Adeline includes a 56-foot wide grassy median with scattered trees between the north and south travel lanes. The broad expanse of ROW easily absorbs the building’s height and massing along the Adeline frontage. The proposed massing is

- further anchored by the six-story Harriet Tubman Terrace Apartment building across Russell Street.
- B. At the pedestrian level, instead of a uniform static setback, the massing is mitigated through setback articulation, ranging from zero to seven feet, as well as ample fenestration, softened by awnings and intermittent landscaping. Additionally, the frontage will be activated by the commercial tenant spaces along Adeline Street, creating a degree of fluidity between the private and public realm.
- C. Abutting the property to the south along Adeline, are three two-story, multi-unit apartment buildings in a row (2910-2918 Adeline). To complement the lower massing of these buildings, the project proposes the District's standard four-foot side yard setback for the approximately 17.5-foot tall podium (first and mezzanine levels), then exceeds the District's setbacks by proposing a 12-foot side yard setback for the second through sixth floors. The massing will be further mitigated by the landscaping plan that proposes tall bamboo to soften the transition.
- D. The transition of building height and massing along the Russell frontage is of heightened concern as the subject site changes from C-SA to and R-4 zoning, abutting the R-4 residential district to the west and partially confronting the lower density R-2A to the north. To meet the purposes of the underlying commercial and residential districts, as well as respect the abutting residential district, the building is designed with a zero street side yard lot line along the commercial tenant and two commercial live/work spaces. Where the bollards block vehicle access on Russell Street just west of the intersection with Milvia Street, signifying the break between commercial and residential district, the proposed building step backs six feet. The step back allows for three, approximately 100-square-foot entry gardens to the three proposed ground floor residential lofts. Not only does the setback reduce the massing at the pedestrian level, but it provides street level interaction between these three dwellings and the rest of neighborhood. The transition to the abutting residential neighborhood is further softened by a 20'-9" setback and approximately 25-foot building separation to the neighboring duplex (1940 Russell). The area will be developed with common useable open space that includes a garden and mature landscaping. The distance to the confronting residential buildings (1943 Russell and 2842 Milvia) is approximately 78 feet at the ground and mezzanine levels.
- E. The overall height of the proposed building similarly steps down from six stories, 64'-1.5" on the C-SA zoned parcels, ~~down to five stories, 54'-9.5" as the building transitions to the R-4 zoned parcel,~~ down to one story, 17'-5.5" for the last 24 feet on the eastern (rear) side of the building. The result is a compatible juxtaposition of massing between the proposed project and the neighboring residential building at 1942 Russell.

**PARKING** -- The project will include 24 stacked vehicle spaces in the ground level garage. Although the proposal represents 29 spaces less than the ~~52-53~~ spaces required by Code (~~47-48~~ residential and 6 commercial), the reduction in the required on-site parking will be mitigated through several factors. Based on the project attributes and conclusions in the Transportation Impact Analysis, the City finds the proposed parking and traffic impacts of the project will not be detrimental for the following reasons:

- F. The project site located just outside the Shattuck Avenue commercial district less than a quarter mile to Ashby BART station and numerous bus connections, and will, therefore, generate a vehicle trip rate per unit that less than that of similar multi-family housing projects.

- G. As required for projects requesting a parking waiver and as conditioned in the project approval; occupants of the building will not be eligible for Residential Parking Permits (RPP).
- H. The project includes 56 secure bicycle parking spaces in the project, while only 2 are required by Code. A bicycle repair station would also be provided. The applicant has committed to provide 5 sidewalk bicycle racks, subject to review and approval of Public Works.
- I. The reduction in vehicle parking supports City policies supporting alternative transportation and the Climate Action Plan.

## SHADOWS

- J. The shadow studies submitted as part of the application illustrate that the neighboring properties to the north (1937 and 1943 Russell Street and 2810 Milvia Street) would receive new shadows from the development in the winter months during the morning hours. Shadows would fall on the front façades of these three buildings, affecting windows into residential living space. In winter afternoons, shadow pass towards the northwest, affecting the Harriet Tubman Apartments property and the Adeline/Russell Street intersection. Due to the orientation of the fenestration on the Harriet Tubman Apartments, the new shadows would not affect any windows, only the southern stucco façade.

In the fall and spring, the two-story residential buildings to the north (1937 and 1943 Russell Street) and west (1940 and 1942 Russell Street) would receive new shadows during the morning hours affecting windows into residential living space on the south façades and west façades, respectively. By noon the shading would have shifted to the windowless façade of the Harriet Tubman Apartments and travels into the Adeline Street intersection throughout the afternoon.

During the summer months, the adjacent properties to the west (1940, 1942 and 1930 Russell Street, and 2905, and 2909 Otis Street) would experience new shadows in the morning hours affecting western facing windows into living space. By noon, all new shading impacts would only affect the public right-of-way.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours. Additionally, at no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day. Such shading impacts are to be expected in an urbanized area along a major corridor.

## MISCELLANEOUS

- K. The project will provide ~~50-52~~ housing units, including two density bonus qualifying units that are available for households of Very Low Income (at 50% of the AMI) and a commitment to provide, in addition: two ~~additional~~ units available for households of Very Low Income, four units available for households of Low Income at (at 80% of the AMI), and two additional units available for households of Moderate Income (up to 120% of the AMI). ~~;~~ ~~†~~ ~~This~~ ~~which~~ will help the City to meet its housing goals and provide housing for an economically diverse population.

- L. The project would promote environmental sustainability by achieving a silver level for new multi-family developments by GreenPoint Rated, administered by Build It Green.
  - M. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services, and by providing car transit benefits.
2. Pursuant to BMC Section 23E.52.090.B.1, the City finds that the proposed project is compatible with the purposes of the C-SA District in that it will provide residential development for people who desire the convenience of location and more open space that is available in Downtown, as the project provides ~~4,071~~3,454 square feet of Useable Open, which exceeds the ~~District's Downtown's~~ requirement for the Downtown area. In addition the project will provide a limited amount of commercial serving uses that will be compatible provides a transition in intensity from the Downtown and will be compatible with surrounding retail and residential uses.
  3. Pursuant to BMC Section 23E.52.090.B.2, as discussed in Finding 1. A-E above, the project will be compatible in design and character with the District and the adjacent residential neighborhoods.
  4. Pursuant to BMC Section 23E.52.090.B.3, the project will provide a limited amount (4,119 square feet) commercial space that will be divided up into four live/work units and one commercial tenant. The size of the tenant spaces alone, in addition to the area dedicated to residential use in the live/work units, will ensure that the project will not result in the domination of one type of commercial/retail use in any one area of the District.
  5. Pursuant to BMC Section 23E.52.090.C, the City finds that the mixed use project, which requests to modify the required lot coverage, Useable Open Space, front and street side yard setbacks, and off-street parking requirements, is permissible as it will encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building because the project is within walking distance to public transit, jobs, goods and services. Furthermore, the project will only provide 24 parking spaces of the ~~52-53~~ required per underlying the C-SA and R-4 District which would encourage the use of existing off-street parking facilities in the area. In addition, it will facilitate the construction of a minimum of ~~four~~ ten below market rate affordable dwelling units (including two Moderate Income units) as defined by HUD Guidelines.

### III. DENSITY BONUS FINDINGS

Pursuant to Government Code Section 65915(b), the Zoning Adjustments Board makes the following findings regarding the density bonus:

- A. Under the City's methodology for implementing density bonuses under Government Code Section 65915, the "base project" consists of 18 dwelling units.
- B. The applicant has committed that two (eleven percent) of the units in the 18-unit "base project" will be affordable to very low income households, as more fully set forth in Affordability Requirements Conditions of Approval. Under the requirements of Government Code Section 65915(b) and (f), this commitment entitles the project to a density increase of 35 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, plus



additional concessions or incentives. This equates to a density bonus of ~~15~~7 units, after rounding.

C. The applicant has requested a concession to allow for increased floor area ratio (FAR), from 4.0 to ~~4.5~~6 FAR in the C-SA District.

In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board hereby grants waivers/modifications and a concession to allow construction of the project at the densities permitted by state law:

- Increase in maximum building height from 3 stories and 35 (R-4) and 36 (C-SA) feet to four stories and 45.5 feet.
- Increase in maximum FAR from 4.0 to ~~4.5~~6 in the C-SA District.

#### **IV. DEMOLITION OF EXISTING BUILDING**

Pursuant to BMC Section 23C.08.050.D, the Zoning Adjustments Board finds that the proposed demolition of the existing building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City because the buildings are not architecturally or historically significant and do not provide any substantial benefits to the neighborhood or the City that would equal the benefits of the proposed project. The City also finds that this demolition is necessary to allow construction of the proposed mixed-use, multi-family building.

## **V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### **2. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

### **3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

### **4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

### **5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### **6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

### **7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

**8. Exercise and Lapse of Permits (Section 23B.56.100)**

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorney’s fees that may result.

**VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

- 10. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.

**Prior to Issuance of Any Building Permit:**

- 11. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage 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.

**Project Liaison** \_\_\_\_\_  
Name Phone #

**Affordability Requirements (12-15)**

- 12. Number of Below Market Rate Units. The project shall provide ~~four-ten~~ (410) below market rate rental dwelling units (“BMR Units”) ~~at an affordability, two-four~~ of which will be restricted to Very Low Income (VLI) Households, ~~and four-two~~ of which shall be restricted to Low or Very Low Income Households (LI), and two which shall be restricted to Moderate Income (MI) households or below; and which satisfy BMC Section 22.20.065. The initial location of the BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design

or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR units shall conform to the addresses assigned to the building by the City.

- 13. Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Section 22.20.065, and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the VLI BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. The maximum qualifying household income for the LI BMR Units shall be 80 percent of the AMI, and the maximum housing payment shall be 30 percent of 80 percent of AMI. [The maximum qualifying household income for the MI BMR Units shall be 120 percent of the AMI, and the maximum housing payment shall be 30 percent of 120 percent of AMI.](#)

If the BMR units are occupied by very low or low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development.

In addition, the following provisions shall apply:

Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).

Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.

BMR units will be provided for the life of the project under Section 22.20.065.

- 14. Determination of Area Median Income (AMI).**

The "AMI" (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

- 15. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.
- 16. Live-Work Notice of Limitation. Prior to issuance of a building permit, the applicant shall supply a deed restriction, notarized and bearing the stamp of filing from the Alameda County Recorder's Office, which stipulates that:
  - a. At least one resident in each Live/Work Unit shall maintain at all times a valid City Business License and any applicable Zoning Certificate or Use Permit for a business on the premises.
  - b. No portion of a Live/Work Unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.

City Monitor: Staff Planner \_\_\_\_\_  
Signature Date

- 17. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
- 18. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
- 19. One Percent for Art: Consistent with BMC §23C.23, prior to issuance of a building permit the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
- 20. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, the applicant provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the remainder \$136,000 AHMF.
- 21. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the

name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

- 22. Construction Noise Reduction Program.** The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - Prohibit unnecessary idling of internal combustion engines.
  - If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
  - Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
  - Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- 23. Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
- 24. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall

have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.

25. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
26. Electric Vehicle (EV) Charging. At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
27. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
28. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
29. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
30. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
31. Parking for Disabled Persons. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."
32. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1<sup>st</sup> Floor.
33. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3<sup>rd</sup> Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at:
    - [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality



Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Construction:**

34. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

**During Construction:**

35. 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.

36. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

- 36-37. The project sponsor will hold monthly meetings with the residents of the Harriet Tubman Senior Center.

- 37-38. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere In the public ROW
- Provision of exclusive contractor parking on-street relevant
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3<sup>rd</sup> floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule

of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 2120 Milvia 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. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

**38-39. Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:

- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
- Calendar and schedule of daily/weekly/monthly construction activities
- The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.

**39-40. 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 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 private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

**40-41. Public Works - Implement 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:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 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.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 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.
- 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.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- 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.

**41-42. 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.

**42-43. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

**43-44. 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.

**44-45. 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.

**45-46. 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.

**46-47. Public Works.** 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:**

**47-48. 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.

**48-49. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 27, 2016, except as modified by conditions of approval.

**49-50. Affordable Housing Mitigation Fee:** Consistent with BMC §22.20.065, the applicant shall pay the affordable housing impact fee prior to issuance of a certificate of occupancy, consistent with a schedule approved by the City Manager or her designee.

**50-51. Construction and Demolition Diversion.** A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

**51-52. Savings By Design.** The applicant shall provide the project planner with an updated Savings By Design Energy Efficiency Form that includes a completed Final Savings for the project. If the applicant has requested that PG&E complete this form and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to submit the form to the project planner with the expected date.

**At All Times:**

**52-53. 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.

**53-54. Rooftop Projections.** No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

**54-55. Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and Landmarks Preservation Commission approval.

**55-56. 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.

**56-57. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.

**57-58. 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.

**58-59. Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.

**59-60. Bike Parking.** Secure and on-site bike parking for 56 bicycles shall be provided for the life of the building.

**61. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and/or entertainment uses, and that each occupant shall not seek to impede their lawful operation.

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# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

OCTOBER 27, 2016

### **2902 Adeline Street**

**Use Permit #ZP2015-0177 to redevelop 3 parcels at 2902 and 2908 Adeline Street and 1946 Russell Street (approximately 14,065 square feet total), which includes the demolition of one single-family dwelling and one mixed-use (commercial and residential) structure; and the construction of a 6-story, mixed-use building with 4,119 sq. ft. of commercial space including 1 commercial unit, 4 live/work units, and 50 dwelling units, including 2 qualifying units available to very low income households and a commitment to provide 2 additional units on site available to low income households. The project would include 56 bicycle spaces and stacked parking for 24 vehicles.**

#### **PERMITS REQUIRED**

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- Use Permit for a Mixed Use Development (Residential/Commercial) of 5,000 sq. ft. or more in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit for Live/Work units in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit to construct new dwelling units in the R-4 District, under BMC Section 23D.40.030
- Use Permit for demolition of a non-residential building, under BMC Section 23C.08.050.A;
- Use Permit to demolish a building with one or more dwelling units, under BMC Section 23C.08.010.B;
- Use Permit to exceed the maximum height requirement of 36 feet, 3 stories for mixed use buildings in the C-SA District, under BMC Section 23E.52.070.D.7;
- Use Permit to exceed the 35 feet, 3 story height limit in the R-4 District, under BMC Section 23D.40.070.C;
- Use Permit to exceed 40% lot coverage in the C-SA District, under BMC Section 23E.52.070.D.7;
- Use Permit to modify the front setback in the C-SA District to less than the 15-foot minimum, under BMC Section 23E.52.070.D.7;
- Use Permit to modify the street side setback in the C-SA District to less than the 6 to 15-foot minimum range, under BMC Section 23E.52.070.D.7; and
- Use Permit to allow for a reduction in the required off-street parking, under BMC Section 23E.52.070.D.7.

#### **WAIVER/MODIFICATIONS PURSUANT TO STATE DENSITY BONUS LAW**

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- To increase the maximum height such that the project would not comply with the 3-story, 35 and 36 foot height limits in the R-4 District and C-SA District. (Required if Use Permit for additional height is not approved.)

#### **CONCESSION PURSUANT TO STATE DENSITY BONUS LAW**

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- To exceed the maximum 4.0 Floor Area Ratio (FAR) in the C-SA District to be 4.5 FAR. (Required if Use Permit for additional height is approved.)

## **I. CEQA FINDINGS**

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”). The project meets all of the requirements of this exemption, as follows:
  - a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
  - b. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
  - c. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
  - d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions will address potential impacts related to traffic, noise, air quality, and water quality.
  - e. The site is already served by required utilities and public services, which will also adequately serve the project.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

## **II. FINDINGS FOR APPROVAL**

1. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

**HEIGHT/MASSING/NEIGHBORHOOD COMPATIBILITY** -- The City finds the height and massing is compatible with the surrounding neighborhood for the following reasons:

- A. The proposed project is uniquely situated at the southeast corner of one of the broadest intersections in the City. Although the Right-of-Way (ROW) across Russell Street is a standard 60 feet, the ROW across Adeline Street at Russell is thrice that at 180 feet, and the distance diagonally to the northwest corner is 268 feet. The ROW along this section of Adeline includes a 56-foot wide grassy median with scattered trees between the north and south travel lanes. The broad expanse of ROW easily absorbs the building’s height and massing along the Adeline frontage. The proposed massing is further anchored by the six-story Harriet Tubman Terrace Apartment building across Russell Street.
- B. At the pedestrian level, instead of a uniform static setback, the massing is mitigated through setback articulation, ranging from zero to seven feet, as well as ample fenestration, softened by awnings and intermittent landscaping. Additionally, the



frontage will be activated by the commercial tenant spaces along Adeline Street, creating a degree of fluidity between the private and public realm.

- C. Abutting the property to the south along Adeline, are three two-story, multi-unit apartment buildings in a row (2910-2918 Adeline). To complement the lower massing of these buildings, the project proposes the District's standard four-foot side yard setback for the approximately 17.5-foot tall podium (first and mezzanine levels), then exceeds the District's setbacks by proposing a 12-foot side yard setback for the second through sixth floors. The massing will be further mitigated by the landscaping plan that proposes tall bamboo to soften the transition.
- D. The transition of building height and massing along the Russell frontage is of heightened concern as the subject site changes from C-SA to and R-4 zoning, abutting the R-4 residential district to the west and partially confronting the lower density R-2A to the north. To meet the purposes of the underlying commercial and residential districts, as well as respect the abutting residential district, the building is designed with a zero street side yard lot line along the commercial tenant and two commercial live/work spaces. Where the bollards block vehicle access on Russell Street just west of the intersection with Milvia Street, signifying the break between commercial and residential district, the proposed building step backs six feet. The step back allows for three, approximately 100-square-foot entry gardens to the three proposed ground floor residential lofts. Not only does the setback reduce the massing at the pedestrian level, but it provides street level interaction between these three dwellings and the rest of neighborhood. The transition to the abutting residential neighborhood is further softened by a 20'-9" setback and approximately 25-foot building separation to the neighboring duplex (1940 Russell). The area will be developed with common useable open space that includes a garden and mature landscaping. The distance to the confronting residential buildings (1943 Russell and 2842 Milvia) is approximately 78 feet at the ground and mezzanine levels.
- E. The overall height of the proposed building similarly steps down from six stories, 64'-1.5" on the C-SA zoned parcels, down to five stories, 54'-9.5" as the building transitions to the R-4 zoned parcel, down to one story, 17'-5.5" for the last 24 feet on the eastern (rear) side of the building. The result is a compatible juxtaposition of massing between the proposed project and the neighboring residential building at 1942 Russell.

**PARKING** -- The project will include 24 stacked vehicle spaces in the ground level garage. Although the proposal represents 29 spaces less than the 52 spaces required by Code (47 residential and 6 commercial), the reduction in the required on-site parking will be mitigated through several factors. Based on the project attributes and conclusions in the Transportation Impact Analysis, the City finds the proposed parking and traffic impacts of the project will not be detrimental for the following reasons:

- F. The project site located just outside the Shattuck Avenue commercial district less than a quarter mile to Ashby BART station and numerous bus connections, and will, therefore, generate a vehicle trip rate per unit that less than that of similar multi-family housing projects.
- G. As required for projects requesting a parking waiver and as conditioned in the project approval; occupants of the building will not be eligible for Residential Parking Permits (RPP).

- H. The project includes 56 secure bicycle parking spaces in the project, while only 2 are required by Code. A bicycle repair station would also be provided. The applicant has committed to provide 5 sidewalk bicycle racks, subject to review and approval of Public Works.
- I. The reduction in vehicle parking supports City policies supporting alternative transportation and the Climate Action Plan.

## **SHADOWS**

- J. The shadow studies submitted as part of the application illustrate that the neighboring properties to the north (1937 and 1943 Russell Street and 2810 Milvia Street) would receive new shadows from the development in the winter months during the morning hours. Shadows would fall on the front façades of these three buildings, affecting windows into residential living space. In winter afternoons, shadow pass towards the northwest, affecting the Harriet Tubman Apartments property and the Adeline/Russell Street intersection. Due to the orientation of the fenestration on the Harriet Tubman Apartments, the new shadows would not affect any windows, only the southern stucco façade.

In the fall and spring, the two-story residential buildings to the north (1937 and 1943 Russell Street) and west (1940 and 1942 Russell Street) would receive new shadows during the morning hours affecting windows into residential living space on the south façades and west façades, respectively. By noon the shading would have shifted to the windowless façade of the Harriet Tubman Apartments and travels into the Adeline Street intersection throughout the afternoon.

During the summer months, the adjacent properties to the west (1940, 1942 and 1930 Russell Street, and 2905, and 2909 Otis Street) would experience new shadows in the morning hours affecting western facing windows into living space. By noon, all new shading impacts would only affect the public right-of-way.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours. Additionally, at no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day. Such shading impacts are to be expected in an urbanized area along a major corridor.

## **MISCELLANEOUS**

- K. The project will provide 50 housing units, including two density bonus qualifying units that are available for households of Very Low Income (at 50% of the AMI) and a commitment to provide two units available for households of Low Income at (at 80% of the AMI), which will help the City to meet its housing goals and provide housing for an economically diverse population.
- L. The project would promote environmental sustainability by achieving a silver level for new multi-family developments by GreenPoint Rated, administered by Build It Green.

- M. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services.
2. Pursuant to BMC Section 23E.52.090.B.1, the City finds that the proposed project is compatible with the purposes of the C-SA District in that it will provide residential development for people who desire the convenience of location and more open space that is available in Downtown, as the project provides 4,071 square feet of Useable Open, which exceeds the District's requirement. In addition the project will provide a limited amount of commercial serving uses that will be compatible provides a transition in intensity from the Downtown and will be compatible with surrounding retail and residential uses.
  3. Pursuant to BMC Section 23E.52.090.B.2, as discussed in Finding 1. A-E above, the project will be compatible in design and character with the District and the adjacent residential neighborhoods.
  4. Pursuant to BMC Section 23E.52.090.B.3, the project will provide a limited amount (4,119 square feet) commercial space that will be divided up into four live/work units and one commercial tenant. The size of the tenant spaces alone, in addition to the area dedicated to residential use in the live/work units, will ensure that the project will not result in the domination of one type of commercial/retail use in any one area of the District.
  5. Pursuant to BMC Section 23E.52.090.C, the City finds that the mixed use project, which requests to modify the required lot coverage, front and street side yard setbacks, and off-street parking requirements, is permissible as it will encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building because the project is within walking distance to public transit, jobs, goods and services. Furthermore, the project will only provide 24 parking spaces of the 53 required per the C-SA District which would encourage the use of existing off-street parking facilities in the area. In addition, it will facilitate the construction of a minimum of four affordable dwelling units as defined by HUD Guidelines.

### **III. DENSITY BONUS FINDINGS**

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Pursuant to Government Code Section 65915(b), the Zoning Adjustments Board makes the following findings regarding the density bonus:

- A. Under the City's methodology for implementing density bonuses under Government Code Section 65915, the "base project" consists of 18 dwelling units.
- B. The applicant has committed that two (eleven percent) of the units in the 18-unit "base project" will be affordable to very low income households, as more fully set forth in Affordability Requirements Conditions of Approval. Under the requirements of Government Code Section 65915(b) and (f), this commitment entitles the project to a density increase of 35 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, plus additional concessions or incentives. This equates to a density bonus of 7 units, after rounding.
- C. The applicant has requested a concession to allow for increased floor area ratio (FAR), from 4.0 to 4.5 FAR in the C-SA District.

In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board hereby grants waivers/modifications and a concession to allow construction of the project at the densities permitted by state law:

- Increase in maximum building height from 3 stories and 35 (R-4) and 36 (C-SA) feet to four stories and 45.5 feet.
- Increase in maximum FAR from 4.0 to 4.5 in the C-SA District.

#### **IV. DEMOLITION OF EXISTING BUILDING**

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Pursuant to BMC Section 23C.08.050.D, the Zoning Adjustments Board finds that the proposed demolition of the existing building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City because the buildings are not architecturally or historically significant and do not provide any substantial benefits to the neighborhood or the City that would equal the benefits of the proposed project. The City also finds that this demolition is necessary to allow construction of the proposed mixed-use, multi-family building.

## **V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### **2. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

### **3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

### **4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

### **5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### **6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

### **7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

**8. Exercise and Lapse of Permits (Section 23B.56.100)**

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. Indemnification Agreement**

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorney’s fees that may result.

**VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

- 10. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.

**Prior to Issuance of Any Building Permit:**

- 11. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage 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.

**Project Liaison** \_\_\_\_\_  
Name Phone #

**Affordability Requirements (12-15)**

- 12. Number of Below Market Rate Units. The project shall provide four (4) below market rate rental dwelling units (“BMR Units”) at an affordability, two of which will be restricted to Very Low Income (VLI) Households, and two of which shall be restricted to Low or Very Low Income Households (LI); and which satisfy BMC Section 22.20.065. The initial location of the BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design

or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR units shall conform to the addresses assigned to the building by the City.

13. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Section 22.20.065, and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the VLI BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. The maximum qualifying household income for the LI BMR Units shall be 80 percent of the AMI, and the maximum housing payment shall be 30 percent of 80 percent of AMI.

If the BMR units are occupied by very low or low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development.

In addition, the following provisions shall apply:

Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).

Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.

BMR units will be provided for the life of the project under Section 22.20.065.

14. Determination of Area Median Income (AMI).

The "AMI" (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

- 15. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.
- 16. Live-Work Notice of Limitation. Prior to issuance of a building permit, the applicant shall supply a deed restriction, notarized and bearing the stamp of filing from the Alameda County Recorder's Office, which stipulates that:
  - . At least one resident in each Live/Work Unit shall maintain at all times a valid City Business License and any applicable Zoning Certificate or Use Permit for a business on the premises.
  - a. No portion of a Live/Work Unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.

City Monitor: Staff Planner \_\_\_\_\_  
Signature Date

- 17. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
- 18. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
- 19. One Percent for Art: Consistent with BMC §23C.23, prior to issuance of a building permit the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
- 20. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, the applicant provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF.
- 21. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the



name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

**22. Construction Noise Reduction Program.** The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- Prohibit unnecessary idling of internal combustion engines.
- If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Route construction related traffic along major roadways and away from sensitive receptors where feasible.

**23. Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.

**24. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall

have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.

25. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
26. Electric Vehicle (EV) Charging. At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
27. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
28. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
29. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
30. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
31. Parking for Disabled Persons. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."
32. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1<sup>st</sup> Floor.
33. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3<sup>rd</sup> Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at:
  - [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality

Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Construction:**

34. **Construction Meeting.** The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

**During Construction:**

35. **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.
36. **Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
37. **Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
  - Alterations, closures, or blockages to sidewalks or pedestrian paths
  - Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
  - Storage of building materials, dumpsters, debris anywhere In the public ROW
  - Provision of exclusive contractor parking on-street relevant
  - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3<sup>rd</sup> floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 2120 Milvia 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. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

38. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
  - Calendar and schedule of daily/weekly/monthly construction activities
  - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
39. 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 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 private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

**40. Public Works - Implement 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:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 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.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 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.
- 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.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- 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.

41. 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.
42. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
43. 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.
44. 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.
45. 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.
46. Public Works. 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:**

47. 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.
48. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 27, 2016, except as modified by conditions of approval.
49. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, the applicant shall pay the affordable housing impact fee prior to issuance of a certificate of occupancy, consistent with a schedule approved by the City Manager or her designee.
50. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.
51. Savings By Design. The applicant shall provide the project planner with an updated Savings By Design Energy Efficiency Form that includes a completed Final Savings for the project. If the applicant has requested that PG&E complete this form and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to submit the form to the project planner with the expected date.

**At All Times:**

52. 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.
53. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
54. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and Landmarks Preservation Commission approval.
55. 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.
56. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.



- 57. 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.
- 58. Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
- 59. Bike Parking.** Secure and on-site bike parking for 56 bicycles shall be provided for the life of the building.
- 60. Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and/or entertainment uses, and that each occupant shall not seek to impede their lawful operation.
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