



Kate Harrison
Councilmember, District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: September 13, 2018

Item Number: 18

Item Description: **Adopt a Resolution for Appropriate City Enforcement Measures to Mitigate Damage Resulting from the Removal of Trees at 1698 University Avenue**

Submitted by: Councilmember Harrison

Amended Resolution and transmittal to express the City Council's preference that the City Manager require the developer to set aside adequate funds to procure, plant and maintain replacement trees. Added a provision in Resolution and transmittal adopting a policy whereby the City Manager formalizes a role for City arborists in implementing tree-related use permit conditions and examines and updates Planning Department procedures in order to ensure that project owners are aware of and in compliance with all applicable development responsibilities before construction commences. Updated Resolution and transmittal to make other minor edits.



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
September 13, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison and Maio
Subject: Adopt a Resolution for Appropriate City Enforcement Measures to Mitigate Damage Resulting from the Removal of Trees at 1698 University Avenue

RECOMMENDATION

Adopt a Resolution in support of City enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.

BACKGROUND

In 2005 the Zoning Adjustments Board (ZAB) approved the construction of a 5-story building with 25 apartments on a vacant lot located at 1698 University Avenue. Much of the discussion by ZAB centered on preserving the three redwood and three other trees on the lot in exchange for allowing additional density.

The permit was further modified in 2014 after the property was bought by United Commonwealth Business Holdings LLC.

Section 1.E. of the modified permit (Modification 2013-0001) found the project consistent with the general welfare of the City and the neighborhood because the developer planned to "follow ZAB's direction to provide additional setbacks on the third, fourth and fifth floors, and to save the existing redwood trees at the southwest corner." Further, section 1.F. stated that "the project is consistent with several new zoning requirements adopted to implement the University Avenue Strategic Plan, including... street trees." The ZAB also cited BMC Section 23B.32.040.D and attached additional conditions to the permit, including that "plans submitted for building permit shall include street trees in accordance with the requirement of the City Forester."

These permit stipulations came as a result of neighbor concerns that the development would be hazardous to the trees that are already facing severe ecological challenges and remove a barrier from the adjoining property to the neighborhood.

On Friday, August 24, construction at the project site destabilized the trees, causing a public safety hazard. Police and fire personnel shut down the construction site, evacuated residents, and closed Jefferson northbound at Addison, University eastbound at Sacramento, and University northbound at McGee.

In addition to the public safety concerns and the city resources used to evacuate the above areas, the destabilization and eventual removal of these trees conflicts with the terms of the ZAB Permit issued on July 10th, 2014. Standard Condition 2 stipulates that “[t]he 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.”

In order to mitigate the detriment to the general welfare of the City and the adjacent neighborhood due to the removal of the trees, the Council should adopt a Resolution in support of the City’s enforcement of appropriate mitigation measures. These include issuing a citation and fine for noncompliance with the use permit, requiring the developer to set aside adequate funds to procure, plant and maintain replacement trees, planting replacement trees in the original location pursuant to the setbacks approved in use permit, prohibiting building on any portion of the lot where the trees were located, and seeking appropriate compensation to the City for mitigation and evacuation expenses. In addition, the Resolution, adopts a policy whereby the City Manager formalizes a role for City arborists in implementing tree-related use permit conditions and examines and updates Planning Department procedures in order to ensure that project owners are aware of and in compliance with all applicable development responsibilities before construction commences.

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FINANCIAL IMPLICATIONS

Staff time is necessary for potential enforcement of appropriate mitigation measures. The City stands to potentially recoup costs related to enforcement from the issuance of a citation and reimbursement for costs related to the evacuation.

ENVIRONMENTAL SUSTAINABILITY

Replanting the removed trees will positively impact the environment.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENT

1. Resolution
2. Modified Use Permit, 1698 University Avenue (Modification 2013-0001, modifying Use Permit 03-1000025)

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

APPROPRIATE CITY ENFORCEMENT MEASURES TO MITIGATE DAMAGE
RESULTING FROM THE REMOVAL OF TREES AT 1698 UNIVERSITY AVENUE

WHEREAS, on Friday August 24, construction at the 1698 University Avenue project site destabilized trees, resulting in a public safety hazard, evacuation and removal of the trees; and,

WHEREAS, modified Use Permit 03-1000025 for the project specifically required the project to follow ZAB's direction "to save the existing redwood trees at the southwest corner" and to implement other related measures to protect the redwood and other trees; and,

WHEREAS, the tree-related permit restrictions came as a result of neighbor concerns that the development would endanger the centuries-old trees; and,

WHEREAS, the trees provided the environment and neighborhood with significant benefits.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley expresses its preference that the City Manager take strong and appropriate enforcement measures to mitigate damage resulting from the removal of the redwood and other trees, including issuing a citation and fine for noncompliance with the use permit, requiring the developer to set aside adequate funds to procure, plant and maintain replacement trees, planting replacement trees in the original location pursuant to the setbacks approved in use permit, prohibiting building on any portion of the lot where the trees were located pursuant to the modified use permit, and seeking appropriate compensation to the City for mitigation and evacuation expenses.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley adopts a policy whereby the City Manager formalizes a role for City arborists in implementing tree-related use permit conditions and examines and updates Planning Department procedures in order to ensure that project owners are aware of and in compliance with all applicable development responsibilities before construction commences.

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ATTACHMENT 1

FINDINGS AND CONDITIONS

AS APPROVED BY ZAB ON JULY 10, 2014

1698 University Avenue

Modification 2013-0001 (modifies Use Permit 03-10000025)

GENERAL NON-DETRIMENT FINDING

1. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed demolition, new mixed-use building with four stories (fifth story approved under finding 2 below) and reduced usable open space, as modified on July 10, 2014, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:
 - A. The project is consistent with General Plan policies LU-13 and LU-27 and University Avenue Strategic Plan goals 1 and 4 because it establishes new commercial space at the sidewalk, encouraging pedestrian activity;
 - B. The project is consistent with General Plan policies LU-25, H-16 and H-19 and University Avenue Strategic Plan goal 3 because it provides it provides three dwellings at below-market-rate prices, thereby helping the City to achieve its housing production goals, and it creates an attractive new development likely to attract long-term, neighborhood-oriented residents;
 - C. The existence of a fourth story will not be detrimental because it will allow the size of the second and third stories to be reduced, thereby providing a more appropriate transition of height and bulk to the smaller-scale structures in the adjacent residential neighborhood. In addition, a four-story building at this site would be consistent in scale and character with other buildings recently approved in the vicinity, including 1719 University and 1801 University, and it would not have detrimental view or shadow impacts, given the flat terrain and built-up character of the surrounding area, and the site's location on the south side of University, where the majority of shadows will fall on the public right-of-way rather than adjacent buildings.
 - D. The project does not exceed the minimum requirements of Government Code Section 65915, and the proposed density bonus and concession units have been located in a manner consistent with the ZAB's preference for a small fifth floor and greater setbacks on the other floors, rather than no fifth floor but smaller setbacks on the other floors. Although the ZAB cannot make the findings normally required

for a Variance (BMC Section 23B.44.030) for the fifth floor, the fifth floor is required as a modification of the C-1 height standard pursuant to Government Code Section 65915, as discussed under finding 2 below, and is not detrimental, as described above.

- E. The project is consistent with the ZAB's direction to provide additional setbacks on the third, fourth and fifth floors, and to save the existing redwood trees at the southwest corner.
- F. The project is consistent with several new zoning requirements adopted to implement the University Avenue Strategic Plan, including the size of the commercial entries, the ceiling height of one of the commercial spaces, the amount of commercial space, and the provision of a bulb-out, street lighting and street trees.
- G. The project will not generate sufficient vehicle trips to significantly impact traffic congestion or pedestrian safety.
- H. The project will not have a substantial adverse impact on any of the nearby landmarks due to its distance from them, which is adequate to address any concerns about aesthetic compatibility from the project's greater height and bulk, and to the degree to which the nearest landmark, Fox Commons, is already shaded during the morning by existing vegetation and buildings.
- I. The usable open space and off-street parking reductions encourage use of the ground floor for commercial purposes and will not substantially reduce the availability of on-street parking in the vicinity of the project, as discussed further under findings 7 and 8 below.

DENSITY BONUS FINDING

- 2. In accordance with Government Code Section 65915, the ZAB hereby grants the requested Use Permit and Variance for the fourth and fifth stories, and Use Permit for two dwelling units on the ground floor, for the following reasons:
 - a) Based on the zoning standards in effect at the time the project was deemed complete, the maximum residential floor area allowed on this parcel is 20,818 square feet. Based on the proposed gross area per unit of 676.4 square feet, the maximum floor area would accommodate 30 units. Thus, for the purposes of calculating the density bonus and affordable housing requirements for this project, the "otherwise maximum allowable residential density," or "base project," is 30 units.
 - b) The project will provide 10 percent of the base project units (three units) at prices affordable to households whose incomes are at or below 50% of the Oakland

PMSA median income. Therefore, under Section 65915(f)(2), the project qualifies for a 32.5-percent density bonus over the base project (ten units). However, the applicant has only requested six bonus units.

- c) The density bonus units cannot be accommodated within the otherwise maximum allowable residential building envelope of the C-1 District, which allows up to three stories, and therefore the C-1 height standard must be modified. Based on the preference expressed by the Zoning Adjustments Board for a small fifth story with greater setbacks on the other residential stories, rather than only four stories but with smaller setbacks on the other stories, the applicant has requested that the project include a fourth story with approximately 6,500 square feet and a fifth story with approximately 2,800 square feet. In addition, the modified project locates two dwelling units on the ground floor, which would otherwise increase the size of higher, more visible portions of the building.

The fifth story normally requires a Variance, but the findings for Variances (Section 23B.44.030) cannot be made in this case. However Section 65915 requires the City to accommodate bonus units by waiving or modifying zoning standards. In this case, consistent with the applicant's request and the ZAB's preference as described above, the ZAB waives and/or modifies the applicable height limits in the C-1 District to the extent necessary to accommodate the bonus units permitted by Section 65915.

CEQA FINDINGS

3. The Zoning Adjustments Board has considered the proposed mitigated negative declaration, and the addendum dated July 10, 2014, together with comments received during the public review process, and finds, on the basis of the whole record before it, that: (1) potentially significant effects in the areas of hazardous materials and noise were identified, but mitigation measures agreed to by the applicant and attached as conditions to the project (including building permit review by the Toxics division and use of best available noise control techniques for construction tools and equipment), would avoid or reduce the effects to a point where no significant effects would occur, (2) there is no substantial evidence the project will have a significant effect on the environment, and (3) the mitigated negative declaration reflects the lead agency's independent judgment and analysis. The record of proceedings upon which this decision is based is located at the Permit Service Center, 2120 Milvia Street, Berkeley, CA 94704.
4. The Zoning Adjustments Board hereby adopts the following monitoring program for the mitigation measures listed in the attached proposed negative declaration: (1) All mitigations requiring sign-off prior to issuance of a building permit shall be signed by the responsible City monitor on the building permit plans; (2) Mitigations requiring continuous implementation shall be verified by the building inspector assigned to the project.

OTHER REQUIRED FINDINGS

5. Pursuant to Berkeley Municipal Code Section 23C.08.050, the Zoning Adjustments Board finds that the proposed demolition of an automobile service building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and the demolition is required to allow a proposed new building.
6. Pursuant to Berkeley Municipal Code Section 23E.36.090.B, the Zoning Adjustments Board finds that the proposed project (as modified on July 10, 2014) is compatible with the purposes of the C-1 District and with the surrounding uses and buildings because it provides pedestrian-oriented commercial space and housing on an underutilized site, it will not unduly impact traffic congestion, sunlight, views, or have other significant physical impacts, and its massing minimizes the perception of height and bulk in order to make it more compatible with the adjacent areas; in addition, the proposed project will not interfere with the continuity of retail and service facilities at the ground level, but improves that continuity by replacing auto-oriented commercial space that is separated from the sidewalk by driveway and parking area with pedestrian-oriented commercial space that abuts the sidewalk. The proposed ground-floor units also satisfies the findings of Section 23E.36.090.B because the units will not be located adjacent to University Avenue, will not detract from the quality of the project's commercial spaces abutting University Avenue, and will not interfere with the operation of the project's commercial spaces or other nearby commercial uses.
7. Pursuant to Berkeley Municipal Code Section 23E.36.090.C, the Zoning Adjustments Board finds that the proposed open space modification encourages use of the ground floor for commercial purposes, because the size of the ground-floor commercial space would have to be reduced to accommodate additional ground-level open space, and there is no other feasible location for open space under the proposed design.

STANDARD CONDITIONS

1. Conditions Shall be Printed on Plans

The following conditions shall be printed on the first sheet, or on the next sheet thereafter as may be practical, of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'City of Berkeley Conditions of Approval'.

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 exclude 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 for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided, that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or does not conflict with any special objective sought by the Board.

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

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

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.

ADDITIONAL CONDITIONS

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

Prior to Issuance of Any Building Permit

- 9. The applicant shall receive Final Design Review approval and incorporate all requirements of such approval into the construction drawings. Plans submitted for Final Design Review shall meet the requirement of BMC Section 23D.04.050 for at least 40 percent of the required open space (exclusive of balconies) to be landscaped and irrigated.
- 10. **Number of Below Market Rate Units.** The project shall provide three (3) below market rate dwelling units ("BMR Units") affordable to "Very Low Income" households, which are required to comply with the State Density Bonus Law (Government Code Section 65915). In addition, the project shall be subject to the following affordability requirements of the City of Berkeley:
 - a) If a condominium map for the project is not recorded prior to issuance of a Certificate of Occupancy, the project shall pay an impact fee pursuant to BMC Section 22.20.065.
 - b) If a condominium map for the project is recorded prior to issuance of a Certificate of Occupancy, the project shall be subject to the requirements of Condition 49 below.
- 11. **Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915, 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. In addition, the following provision shall apply to all BMR rental units, whether such units are required to qualify for a State density bonus or not:

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.

- 12. No modification of this Use Permit or the Regulatory Agreement shall be required to allow the provision of additional BMR units, or additional affordability, than required in the foregoing provisions.
- 13. Plans submitted for building permit shall include 31 total parking spaces.
- 14. Plans submitted for building permit shall include replacement of sidewalk, curb and gutter as necessary to comply with current City of Berkeley standards for accessibility, and street trees in accordance with the requirements of the City Forester (644-6566). The plans shall also include the bulb-out described in condition 46 below.
- 15. Plans submitted for building permit shall include a sign reading "Left Turn Only" visible to drivers exiting the garage, subject to the specifications and approval of the Office of Transportation.
- 16. Plans submitted for building permit shall include garbage containers screened from public view and smoke and odor control equipment approved by the City Environmental Health Division and utilizing the best available technology to prevent impacts to surrounding uses.

City Monitor: Environmental Health

Signature Date

- 17. The applicant shall provide to the City's Public Works Department the quantity of sanitary drainage fixture units (refer to Table 7-3 of the California Plumbing Code) to calculate the sewer connection fee.
- 18. **Mitigation VII.1:** A Soil and Groundwater Management Plan (SGMP) shall be submitted to the Toxics Management Division (TMD) with the project's building permit application and shall be approved by TMD prior to issuance of the building permit. The SGMP shall identify procedures for soil and groundwater management including identification of pollutants and disposal methods and shall comply with the hazardous materials and waste management standards required by Berkeley Municipal Code

Section [15.12.100](#), the San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074 C3 and C6, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66360 et seq.), and the East Bay Municipal Utility District's Ordinance 311. The SGMP shall also include:

- A requirement that TMD be notified within 24 hours of the discovery of any previously undiscovered contamination;
- Procedures to manage odors, dust and other potential nuisance conditions expected during development.
- A requirement that the name and phone number of the individual responsible for implementing the SGMP and responding to community questions and complaints be posted at the construction site on the same notice required by Zoning Officer for noise management (BMC B.28.050.D).

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

- 19. Mitigation XI.3:** Prior to issuance of a building permit, the applicant shall provide a report prepared by a licensed engineer with substantial experience in noise analysis and mitigation, certifying that the residential portions of the project will conform to a noise exposure standard of 65 L_{dn} (day/night average noise level) for outdoor noise in noise-sensitive outdoor activity areas (such as required open space areas) and 45 L_{dn} for indoor noise. Furthermore, the project shall satisfy the requirements set forth in Title 24, part 2 of the California Administrative Code, Noise Insulation Standards.
- 20.** Prior to issuance of a building permit, the applicant shall submit any geotechnical plans and recommendations required by the Building and Safety Division.
- 21.** The applicant/end user shall enter into a First Source Agreement with the City's WorkSource Department. The First Source Agreement requires the applicant/end user/tenant to use the City's employment and training system as their first source in recruiting and employing construction and permanent employees. The First Source program provides free employment services and gives priority to Berkeley residents and other specified groups as potential employees.
- 22.** Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual who can most effectively manage construction noise from the project. This individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner on a weekly basis or upon request.

Noise Management Individual _____
Name Phone #

23. Prior to issuance of a building permit, the applicant shall provide the project planner with a schedule of major construction phases, 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 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 project planner of any changes to this schedule as soon as possible.

24. Prior to issuance of a building permit, the applicant shall complete a "Construction and Demolition Recycling Plan," submit the plan to the Solid Waste Management Division for approval, and attach the approved plan to the construction drawings. The plan is available at www.ci.berkeley.ca.us/onlineservice/forms.htm#planning (look under "Land Use Planning") or by contacting Land Use Planning at 510-981-7410. After completing the form contact Solid Waste Management at 981-6368 for approval.

City Monitor: Solid Waste Mgmt. Staff _____
Signature Date

25. Prior to issuance of a building permit, the applicant shall secure the City Traffic Engineer's approval of a construction staging and traffic management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd 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 City Zoning Officer and/or Traffic Engineer will limit off-site parking of construction-related vehicles to protect the health, safety, or convenience of the surrounding neighborhood.

City Monitor: Traffic Engineer _____
Signature Date

26. Prior to issuance of a building permit, the applicant, in cooperation with the Office of Transportation, shall secure approval from AC Transit for any required relocation of the bus stop at University and McGee, whether temporary or permanent. The permanent location of the bus stop shall be at the discretion of the City's Traffic Engineer and AC Transit.

During Construction:

27. Prior to any construction-related activities, an on-site meeting shall be held 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.

28. Durable, all-weather signs with the words “Noise Management Info” and the telephone numbers of the individual designated in condition 19 above and the City’s Code Enforcement unit (981-2492) in minimum 4-inch-tall letters shall be posted at the University and McGee property frontages throughout construction.
29. **Mitigation XI.1** (Equipment Prohibitions): No construction activity shall be allowed that may reasonably be expected to cause vibrations or excessive noise, due to the use of heavy machinery such as pile drivers or drilling rigs.
30. **Mitigation XI.2** (Best Available Noise Control Techniques): Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible and necessary). Impact tools (e.g., jack hammers, pavement breakers and noise drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to 10dB. External jackets on the tools themselves shall be used where feasible and this could achieve a reduction of 4 dB. Quieter procedures shall be used such as drilling rather than impact equipment whenever feasible. Stationary noise sources shall be located to minimize noise transmission over a property line and shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

To demonstrate compliance with Mitigation Measures XI.1 and XI.2, the applicant shall provide the Zoning Officer and the Environmental Health Department with documentation demonstrating the type of construction equipment to be used, the noise specifications for each piece of equipment or categories of equipment, and that the equipment satisfies these two mitigation measures. This documentation shall be reviewed and approved as satisfying the requirements of these two Mitigation Measures by both the Zoning Officer and the Environmental Health Department prior to issuance of a building permit. The applicant shall periodically update this information as the project proceeds through construction, as specified by the Zoning Officer.

31. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday.
32. To ensure compliance with BMC Section 13.40.070.B.7 (a-b) Prohibited acts, the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work is subject to the following standards measured at the property line of the subject site: (a) Maximum sound levels for nonscheduled, intermittent, short-term operation (less than ten days) of mobile equipment shall not exceed 85 dBA Monday -

Friday from 8:00 a.m. to 6:00 p.m. or 70 dBA weekends and legal holidays 9:00 a.m. to 12:00 p.m.; (b) Maximum sound levels for repetitively scheduled and relatively long term operation (period of ten days or more) of stationary equipment shall not exceed 70 dBA Monday -Friday from 8:00 a.m. to 6:00 p.m. or 60 dBA weekends and legal holidays 9:00 a.m. to 12:00 p.m.

33. To ensure compliance with the City of Berkeley's Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.
34. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
35. 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.
36. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
37. 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.
38. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
39. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
40. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
41. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department.
42. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:

43. Prior to final inspection or issuance of an occupancy permit, the applicant shall secure approval of any address change, new address and/or parcel merger associated with this Use Permit.
44. Prior to final inspection or issuance of an occupancy permit, the applicant shall pay for staff mitigation monitoring activities pursuant to the adopted Planning Department fee schedule.
45. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 27, 2014, except as modified by the Design Review Committee during final design review, or by other conditions of this Permit.
46. The bulb-out shown on the approved site plan shall be completed pursuant to the instructions and requirements of the Office of Transportation and Public Works Department, including the requirement to obtain an engineering permit. The Office of Transportation shall have authority to relocate the bulb-out to the University frontage if it deems necessary to comply with the University Avenue Strategic Plan, or other applicant plans or standards. The bulb-out shall not be required if determined to be infeasible by the Public Works Department.

At All Times:

47. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
48. 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.
49. Occupants and/or tenants of the building shall not be eligible for RPP (Residential Parking Permit) permits. The applicant or his designee shall make all prospective tenants aware of this condition prior to signing any lease for the building.
50. The parking spaces designated for the commercial portion of the project shall be made available to residential occupants when not required by the commercial occupants (e.g., evenings and weekends, or when commercial employees do not arrive by automobile).
51. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted to TMD within 30 days if on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids; 500 pounds for solids; or 200 cubic feet of gases at standard temperature and pressure.

- 52.** The City of Berkeley is contemplating adopting an affordable housing mitigation fee on new residential ownership units constructed in the City of Berkeley. Once an affordable housing mitigation fee is established by the City pursuant to the new ordinance, the Project shall be required to pay that fee (or provide on-site Below Market Rate Units in lieu of the fee, if allowed under the fee ordinance), but not exceeding \$40,000 per unit in 2014 dollars, prior to issuance of any certificate of occupancy, or if a certificate of occupancy has already been issued at the time the fee becomes effective, within 30 days thereafter.
- 53.** 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 attorneys fees that may result.
- 54.** In order to promote a more attractive streetscape, visibility through the front windows of the live/work unit shall be maintained at least ten feet into the unit, or, if this not feasible, window displays showing the goods, products, or services offered by the live/work business shall be provided, in accordance with the City's sign ordinance. Live/work occupants shall not use blinds, curtains, or other window coverings in any manner that substantially conflicts with this condition.