

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 22, 2010

2598–2600 Shattuck Avenue

Use Permit #08-10000130

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21084, et seq.) pursuant to Section 15332 of the CEQA Guidelines (Class 32 “In-Fill Development Projects”), as follows:
 - a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications and concessions pursuant to State density bonus law.
 - 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 are already 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. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets, and will actually help reduce congestion at the Carleton/Shattuck intersection by installing a traffic signal as part of the project.
 - e. The site is already served by required utilities and public services, which will also adequately serve the project.

Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, nor any cumulatively significant impacts (such as traffic), nor will it adversely impact any designated historical resources. The existing building is not a designated historical resource and the Landmarks Preservation Commission (LPC) declined to initiate it for City landmark status at their meeting in November 2009.

GENERAL NON-DETRIMENT FINDINGS

2. Pursuant to BMC Section 23B.32.040, the Zoning Adjustments Board finds that project will not, 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 would add vitality, pedestrian activity and neighborhood-serving commercial uses to the neighborhood by providing substantial new ground-floor commercial space and 155 new dwelling units to support those uses and other businesses in the neighborhood.
 - B. The project would be compatible with surrounding land uses, which are similar to those of the project, and would promote the economic vitality of Shattuck Avenue. The project would be compatible with adjacent residential uses, particularly those to the west, because the commercial driveway is located on Carleton Street, the buildings step down to two and three stories along the west property line, and the buildings provide landscape setbacks along the west property line.
 - C. The project would improve the pedestrian environment and appearance of a prominent "gateway" location by redeveloping an underutilized property with a mixed use building containing ground floor uses that would generate pedestrian activity and visual interest along the street frontage.
 - D. The project would provide 31 affordable housing units as set forth in Condition of Approval 80, thereby helping to meet the City's affordable housing goals.
 - E. The proposed parking reduction would not be detrimental because the site is well-served by public transit, and the rate of transit usage is likely to be relatively high. The proximity of the Downtown, and basic goods and services such as Walgreen's and Berkeley Bowl, would make the project more attractive to residents who prefer walking and transit, and a reduction in available off-street parking would further encourage this outcome. In addition, the building is likely to be developed for very-low or low-income persons with physical disabilities, who are generally less likely to own automobiles and more likely to rely on public transportation. The commercial parking reduction is also consistent with this purpose because there is a large supply of on-street parking on this portion of Shattuck Avenue during the evening, which is when the commercial parking demand would be highest.

DENSITY BONUS FINDINGS

3. Pursuant to Government Code Section 65915(b) and BMC Section 23C.12.050.A, the Zoning Adjustments Board (ZAB) makes the following findings for density bonus entitlements on the R-2A portion of 2600 Shattuck Avenue:
 - A. Under the City's methodology for implementing density bonuses under Section 65915, the "base project" for the R-2A portion of 2600 Shattuck consists of eight dwelling units built above the existing commercial building, as allowed by the R-2A density limit.
 - B. The applicants have committed that two (20 percent) of the units in the eight-unit "base project" will be affordable for low income households, as more fully set forth in Condition of Approval 80. This commitment entitles the applicants to a density increase of 35 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus one additional concession or incentive. This equates to a density bonus of three units, after rounding.
4. In accordance with Government Code Sections 65915(d) and (e), in order to allow construction of the requested density bonus, the applicants are entitled to a waiver/modification of the R-2A density standard to allow 11 dwelling units where the standard allows 8 units. This waiver/modification is required because the density bonus units cannot be accommodated within the otherwise maximum allowable residential density of the R-2A District, and therefore the R-2A density standard must be modified to accommodate the density bonus units.

REASONABLE DISPERSAL FINDING

5. The project proposes a total of 31 inclusionary units. Three of these units would be BMR condominium units at 2600 Shattuck. The remainder would constitute a separate 28-unit rental building at 2598 Shattuck.

BMC section 23C.12.040.D requires that:

All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.

The Board finds that this proposed distribution of inclusionary units meets the requirement of Section 23C.12.040.D for the following reasons.

As a threshold matter, the units at 2598 Shattuck meet the requirement that “...Inclusionary Units... be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.” The average size of the units at 2598 Shattuck will be 880 square feet, while the average unit size in the C-SA portion of 2600 Shattuck is 825 square feet.¹ Furthermore, as a percentage of total units, 2598 Shattuck has more 2-bedroom units and fewer studio units than 2600 Shattuck, as shown in the following table:

Unit Type	2598 Shattuck	2600 Shattuck (C-SA Portion)
1 bedroom	20 (71.4%)	65 (58%)
2 bedroom	4 (14.3%)	12 (10.7%)
Studio/ Jr. 1 bedroom	4 (14.3%)	35 (31.3%)
Total	28	112

In addition, the level of amenity (“appearance, materials and finish quality”) in the units at 2598 Shattuck will be comparable or superior to the level of amenity in the units at 2600 Shattuck, as follows:

- Both 2598 and 2600 Shattuck have access to high-quality common open space. The common open space for 2598 Shattuck is arguably more desirable because it is located at ground level rather than podium level, which is generally regarded as providing a better connection to nature.
- Both 2598 and 2600 Shattuck have single-loaded corridors, allowing improved natural ventilation and improved views and privacy from unit entries.
- According to the applicant, the units at 2598 Shattuck will be specially designed for persons with disabilities, and will conform to the federal Americans with Disabilities Act, which exceeds local building code requirements. In general, they will have wider hallways and larger rooms, be finished with more durable materials (to withstand wheelchair use), and be equipped with special assistive devices and technology. Specific design features will include:
 - computer and portable device controls
 - remote environmental controls for heating and/or cooling
 - video monitoring for guest access
 - wheelchair-accessible counter tops and bathroom fixtures

¹ The Board has not included 2037 Parker in this analysis because that portion of the project is not subject to Chapter 23C.12 due to its size, and has not included the R-2A portion of 2600 Shattuck because the applicant has met the inclusionary requirement for that portion by providing three inclusionary units within that structure.

- wainscoting on walls to protect from wheelchair bumping
- easy-to-use hardware and buttons
- 2598 Shattuck has the same number of stories as, and is only five feet shorter than, 2600 Shattuck, and therefore views from any given floor of one building will be similar to those from the same floor of the other building. In particular, it should be noted that both buildings will provide excellent views of the Bay and Hills from the fourth and fifth floors. In fact, the Hill views from 2598 Shattuck are likely to last longer since the property to the east has a viable retail building, while the property to the east of 2600 Shattuck has vacant buildings in poor condition and is more likely to be redeveloped with a high-density use.
- Most of the units at 2598 Shattuck are located a comfortable distance from stairs and elevators. Although the units that are closer to these features may be less desirable, the proportion of these units to the total number of inclusionary units is not any greater than if the inclusionary units were dispersed evenly throughout both buildings.
- 2598 Shattuck has 11 units with private balconies (approximately 40 percent of the total units in that building), while 2600 Shattuck has 69 units with private balconies (approximately 60 percent of the total units in that building). Given the different sizes and configurations of the buildings and the fact that Section 23C.12.040.D does not mention balconies as amenities, and in light of the other characteristics of the buildings, these percentages are comparable under the circumstances.
- Both 2598 and 2600 Shattuck have equal access to social amenities including good jobs, quality schools, health care and healthy food choices, parks, clean air and water and other amenities. Because the buildings are located across the street from one another, children in both buildings will have the opportunity to attend the same schools.

Accordingly, the Board determines that the inclusionary units at 2598 Shattuck will have a comparable level of amenity to, and be just as desirable as, the units at 2600 Shattuck, even though they will not be identical or equivalent to the units at 2600 Shattuck. Nonetheless, they are “comparable” in size and level of amenity under Section 23C.12.040.D.

With respect to the requirement that inclusionary units be “reasonably dispersed”, the Board concludes that, under the unique circumstances of this project, this requirement is met, as explained below.

The requirement for “reasonable dispersal” is primarily intended to ensure that inclusionary units are not concentrated in portions of the project that are less desirable than other portions and to promote the economic integration of low income households into market rate projects in order to allow these households access to amenities

afforded to middle income households. Most housing projects in Berkeley are comprised of a single building, and in any building, some areas will be more desirable than others, due to views, distance from entrances/elevators and streets/sidewalks, proximity to open space, and other factors. Accordingly, the City has consistently interpreted Section 23C.12.040.D as not allowing inclusionary units to be concentrated in portions of a building that are clearly less desirable due to such factors, although the City does not require strict proportional distribution of inclusionary units throughout a building.

The question is whether, under the particular circumstances of this project, locating all of the inclusionary units in a separate building on the project site is a reasonable dispersal “throughout the project”, given that locating all of the inclusionary units in a single building enables the provision of significant benefits to the individuals who will be eventually housed in these units.

In this case, this dispersal will enable the following benefits:

- Provision of needed rental housing/deeper affordability than would be required for condominium units: Due to the recent *Palmer* court decision, which invalidated inclusionary requirements for rental projects in California, the City is likely to see less production of affordable rental units than in the past.² The proposed project would provide deeper levels of affordability than would result from compliance with Chapter 23C.12 for condominium units. Under Chapter 23C.12, 28 condominium units would be sold at costs affordable to households with an income of 80% of AMI (potentially greater depending on the cost of development of the units) or in-lieu fees would be paid. The proposed project would provide the same number of units as rentals and at deeper levels of affordability: at least one-half at 81% of AMI and one-half at 50% of AMI (or 81% of AMI in the absence of a Section 8 or comparable program).
- Supportive services for residents: The applicant will provide various supportive services for the residents of 2598 Shattuck. Locating the inclusionary units in a separate building allows the supportive services to be offered on site which provides an additional benefit to the residents of 2598 Shattuck.

Accordingly, the Board finds that the project’s inclusionary units are reasonably dispersed pursuant to Section 23C.12.040.D. This finding is based upon explicit representations by the applicant, and conditions of approval, that the specific project characteristics discussed in this finding will in fact be present in the project as built. The Board has materially relied on these representations and conditions, and in their absence the Board would not have made this finding.

² As a condominium project, this project is not subject to the *Palmer* decision and must still provide 20 percent inclusionary units or pay an equivalent in-lieu fee. However, the level of affordability achieved by either of these options is not as great as the level of affordability achieved by dispersing the proposed inclusionary units at the 2598 Shattuck rental building.

Finally, the Board finds that this project is unique and unprecedented in Berkeley, in that it provides what would otherwise be condominiums affordable to low or moderate-income households as rental units affordable to moderate and low- or very-low income households, and provides additional amenities including supportive services for the rental housing tenants. No other project in Berkeley has taken this approach to complying with Chapter 23C.12, and the Board's determination regarding the proposed dispersal of inclusionary units in this case is limited to these facts and is not intended to act as precedent for any other project. Rather, each project must be considered and evaluated based on its own particular circumstances. In particular, the Board's reasoning and analytical approach in this case does not extend to single-building projects or projects that do not provide additional amenities and benefits of the general nature of those on which this finding is based.

OTHER REQUIRED FINDINGS

6. **(C-SA General Use Permit Findings)** Pursuant to BMC Section 23E.52.090.B, the Zoning Adjustments Board finds that:
1. The project is consistent with the purposes of the C-SA District in that it provides additional commercial spaces that will primarily serve area residents and/or businesses (purpose C), provides housing for persons who desire the convenience of location and more open space than is available Downtown (purpose E), provides for an active and vital pedestrian environment (purpose G), includes a mix of uses including housing and retail (purpose H) and increases opportunity for business owned and operated by local residents by providing for smaller "micro" retail spaces (purpose I).
 2. The project is compatible in the design and character of the District and the adjacent residential neighborhoods in that its height steps down from five to three stories at the west, in order to minimize impacts on the adjacent residential uses. Furthermore, the proposed residential and commercial land uses are similar to those of surrounding properties.
 3. The project would not result in domination of one type of commercial/retail use in any one area of the District in that the project would provide a variety of commercial lease options include restaurant and retail, as well as a micro retail, all of which would lend to a variety of use types consistent with the surrounding commercial properties.
7. **(C-SA Findings for Modifications on Mixed Use Building)** Pursuant to BMC Section 23E.52.090.C, the Zoning Adjustments Board finds that the proposed modifications for building height, yards, lot coverage, and parking are appropriate because:
1. The project would encourage utilization of public transit by increasing the housing stock near existing BART stations and AC Transit lines.

2. Reduced setbacks on the street frontages of the C-SA portions of the project would permit consistency with the building setbacks existing in the adjoining commercial areas, where a residential building setback from these frontages would not serve a useful purpose and would not be appropriate from an urban design perspective.
 3. The project would facilitate the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines by providing 31 affordable housing units.
 4. As indicated in Finding 6.1 above, the project is consistent with the purposes of the District.
- 8.** Pursuant to Berkeley Municipal Code Section 23E.16.040.B.2, the Zoning Adjustments Board makes the following findings of “Public Convenience and Necessity” for service of beer, wine and distilled spirits for on-site consumption in a full-service restaurant at 2598 Shattuck:
- a.** The proposed establishment will promote the City's economic health, contribute to General Plan or Area Plan policies or further District purposes because it will generate significant additional business license and sales tax revenue, and also contribute to the economic health of other nearby businesses. The establishment furthers various General Plan and Area Plan policies and District purposes, as discussed in Finding 6.1 above.
 - b.** The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales, because sales of distilled spirits are becoming increasingly common in higher-end restaurants, and it would be more difficult to establish such restaurants at the project site without the ability to sell distilled spirits.
 - c.** The applicant has not operated a licensed establishment that has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations.
 - d.** There are no public parks or Berkeley Unified School District schools within 1,000 feet of 2598 Shattuck Avenue. Although a BUSD athletic field is located approximately 700 feet from the site, the proposed alcohol service would not adversely impact students or others using the field because it is incidental to a full-service restaurant and such service does not typically lead to alcohol-related problems. Furthermore, at 700 feet away, the site is too far from the field to have any appreciable impact.
 - e.** The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

9. The applicants have agreed that if they elect Option A in condition 10, the project will not be eligible for assistance from the City's Housing Trust Fund (HTF) pursuant to Section IV.A.1.a of the HTF Guidelines because the units proposed to be constructed at both 2598 and 2600 Shattuck are considered one project for HTF purposes and more than 40% of the units are market rate units. The project will also be ineligible for HTF assistance pursuant to Section IV.A.2 because homeownership units required to be provided through the Inclusionary Ordinance are not eligible for an HTF subsidy.

STANDARD CONDITIONS

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

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' The second sheet may also be used if the first 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 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.

9. 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.

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:

10. Prior to issuance of a building permit, the applicant shall select one of the following options and relinquish the other:

Option A: 2598 Shattuck shall contain 28 inclusionary rental units, and 2600 Shattuck shall contain at least three (3) inclusionary homeownership units, subject to Condition 80 below.

Option B: The project shall comply with the requirements of Chapter 23C.12, by providing inclusionary homeownership units dispersed throughout 2598 and 2600 Shattuck, and/or by paying an in-lieu fee. In accordance with Govt. Code Section 65915, the project shall provide two ownership units on the R-2A portion of 2600 Shattuck, which shall be affordable to households earning less than or equal to 80% of AML, regardless of whether an in-lieu fee is paid. The provisions of Condition #80 below shall apply to this option to the extent applicable.

11. If the applicant selects Option A in Condition 10, the following conditions shall apply:

- a) The project will not be eligible for assistance from the City's Housing Trust Fund (HTF) pursuant to Section IV.A.1.a of the HTF Guidelines because the units proposed to be constructed at both 2598 and 2600 Shattuck are considered one project for HTF purposes and more than 40% of the units are market rate units. The project will also be ineligible for HTF assistance pursuant to Section IV.A.2 because homeownership units required to be provided through the Inclusionary Ordinance are not eligible for an HTF subsidy.
- b) No building permit, foundation inspection, rough framing inspection, or certificate of occupancy shall be issued or approved for 2600 Shattuck until the same has also been issued or approved for 2598 Shattuck.

If the applicant submits an application to modify this condition in order to allow construction of the proposed units at 2600 Shattuck without also constructing any units at 2598 Shattuck, then the City shall require that the applicant provide 26 inclusionary ownership units dispersed throughout 2600 Shattuck and/or pay an in-lieu fee pursuant to BMC Chapter 23C.12 before a certificate of occupancy shall be approved.

- c) All rental units at 2598 Shattuck shall be rented to households which contain at least one person with a disability, as that term is defined by federal law.

- d) Prior to issuance of a building permit for 2598 Shattuck, an architect, engineer, or other design professional selected by the City and paid by the applicant (but not to exceed \$2,500) shall review the plans and verify that they comply with the Americans with Disabilities Act and with Universal Design standards. At a minimum, the plans shall include the following accessibility features:
- computer and portable device controls
 - remote environmental controls for heating and/or cooling
 - video monitoring for guest access
 - wheelchair-accessible counter tops and bathroom fixtures
 - wainscoting on walls to protect from wheelchair bumping
 - easy-to-use hardware and buttons
- e) The applicant shall provide suitable supportive services to the residents of 2598 Shattuck for the life of the building. Prior to issuance of a building permit for 2598 Shattuck, the applicant shall submit the following to the Zoning Officer: (1) a signed contract or memorandum of understanding between the applicant and the service provider(s), (2) a summary of the service provider's experience in meeting the needs of the residents, and (3) a preliminary supportive services plan that identifies the specific services to be provided and explains how these services are appropriate for the residents. Prior to approving the services plan, the Zoning Officer shall consult with the Housing Department. After approval of the plan, the applicant may request, and the Zoning Officer may allow, further modifications to the plan as necessary to better serve the residents, and after consulting with the Housing Department.
- 12.** If the applicant selects Option B in Condition 10, at least 20 parking spaces shall be provided for 2598 Shattuck Avenue.
- 13.** Prior to applying for a building permit, 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.
- 14.** Prior to issuance of a building permit, the applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
- 15.** Prior to issuance of a building permit, the applicant shall review the Draft LEED NC Checklist and submit any changes that affect the project's score, along with comments on revised measures, to the project planner. Provided that the project qualifies, the applicant shall also apply for PG&E's "Savings by Design" program for new commercial construction and submit a copy of the application to the project planner.
- 16.** Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage

construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

□ Noise Management Individual _____
Name Phone #

17. 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 981-6357 for approval. A current copy of this plan shall be available at all times at the construction site for review by City staff.

City Monitor: Solid Waste Mgmt. Staff _____
Signature Date

18. Prior to issuance of a building permit, the applicant shall secure the City Traffic Engineer's approval of a "construction 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 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.

City Monitor: Traffic Engineer _____
Signature Date

19. Project is subject to Final Design Review (FDR) approval by the Design Review Committee prior to building permit issuance. All conditions of FDR approval shall be incorporated into the plans submitted for a building permit.
20. Prior to issuance of a building permit, the applicant shall secure an encroachment permit from the City of Berkeley for any building features or construction activity within, the public right-of-way on Shattuck Avenue, Carleton Street and Parker Street.
21. Prior to issuance of a building permit, the applicant shall submit any geotechnical plans and recommendations required by the Building and Safety Division.

- 22.** Prior to issuance of a building permit, construction drawings shall be reviewed and approved by the City's Toxics Management Division (TMD). The applicant shall provide to TMD a plan for detection, analysis, and removal of any contaminated soil and groundwater or underground storage tanks that may be discovered during construction activities. TMD shall have authority, based on permit review and/or subsequent detection of contaminated materials, to require additional information and/or mitigations as necessary to protect construction workers, the community and the environment. Obvious soil contamination discovered during demolition, grading, or excavation shall be removed, segregated, profiled, covered, and removed, consistent with the approved plan or as determined by TMD. The applicant shall contract with a qualified professional to collect verification soil samples to ensure complete soil removal, and the City of Berkeley Toxics Management Division shall be notified of all soil contamination requiring removal. A current copy of this plan shall be available at all times at the construction site for review by City staff.
- 23.** Prior to issuance of a building permit, the applicant and/or end user(s) shall enter into a First Source Agreement with the City's WorkSource program, a referral service for Berkeley residents seeking jobs. The agreement requires employers to consult WorkSource before hiring construction workers or permanent employees, but leaves the final hiring decision with the employer. Please call (510) 981-7551 for further information, or visit WorkSource at 1947 Center Street (basement).
- 24.** 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.
- 25.** Prior to issuance of a building permit, the applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with the Construction Management Plan (Condition 14), and other applicable conditions and regulations. Should compliance monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer.
- 26.** Prior to issuance of a building permit, the project shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20, to the satisfaction of the Public Works Department. The following conditions apply:

 - A. The project plans shall identify site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants into the City's storm drainage system, regardless of season or weather conditions.

- B. The project plans shall include erosion control measures to prevent soil, dirt, and debris from entering the storm drain system, in accordance with BMC Chapter 17.20.
 - C. Trash enclosures and/or recycling areas shall be covered; no other area shall drain onto these areas. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. The applicant shall contact the City and East Bay Municipal Utility District (EBMUD) for specific connection and discharge requirements prior to building permit issuance. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City and EBMUD.
 - D. Landscaping shall be designed with efficient irrigation to reduce runoff and 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 feasible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- 27.** Prior to issuance of a building permit for the restaurant, the restaurant floor plan shall be submitted to the Police Department's Community Services Bureau for approval, and any changes required by the Police Department shall be included in the plans submitted for a building permit.
- 28.** Parking Lift- Fire Safety Design Requirements. Any parking lift in a structure shall have coverage by fire sprinklers at all levels, both above and below grade. Any parking lift with below grade pits greater than 6 feet in depth, with a capacity of more than two vehicles, shall have an emergency access gallery for the below grade area. The gallery can be located on either long axis of the pit. The gallery shall have at least a clear headroom height of 7 feet and clear width of 3 feet. The gallery shall be accessed from the grade of the drive aisle level by stairs or if directly into a pit access may be by ladder with an angle of no greater than 60 degrees, minimum 4 inch wide treads and a hand rail on both sides. When any pit is greater than 3 vehicles in width, access shall be provided at each end of the gallery. An exhaust fan override switch shall be located at the fire department entrance point to the parking area. The override switch shall turn the exhaust fan on at a maximum exhaust rate.

Prior to Construction:

- 29.** 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 including (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 Noise Management Individual for the project, (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. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

30. Prior to any construction activities, 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:

31. 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.
32. Construction activity shall occur only between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, and between 9:00 a.m. and 4:00 p.m. on Saturday. 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 applicant must notify the Zoning Officer and request an exception for a finite period of time. The project shall not be allowed more than 10 extended working days. If the Zoning Officer approves the request, then at least four days prior to the expanded schedule, the applicant 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. No construction-related activity shall occur on Sunday.
33. Where technically and economically feasible, construction activities shall not exceed the maximum sound levels specified in BMC Section 13.40.070.B.7(b). To ensure compliance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.
34. 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. No construction activity that may cause excessive off-site vibration or noise from heavy machinery such as piledrivers, drilling rigs (except as necessary for elevator, shoring, and soil testing), etc. shall be allowed.
35. 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.

36. 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.

□ Survey Verification

City of Berkeley Zoning Officer

37. 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.
38. 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.
39. 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.
40. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
41. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
42. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:

43. Except as modified herein, the project shall conform to the approved plans dated March 3, 2010, and to all statements in the Use Permit.
44. Prior to issuance of an occupancy permit or final inspection approval for either 2598 or 2600 Shattuck, the applicant shall install a new traffic signal at Shattuck Avenue and Carleton Street, as specified in the project's traffic study and in accordance with the requirements of the City's Public Works Transportation Division. The traffic signal shall, unless otherwise agreed upon in writing by the City's Transportation Services Manager, be fully actuated with video detection for all modes, countdown pedestrian signal heads, APS for visual and hearing impaired, hardwire interconnection with the

Downtown signal system, installed and operational with BFD pre-emption hardware, and a minimum of four signal timing plans prepared and provided to PW Traffic Engineering for review and approval with ultimate installation in the field by the Electrical Division.

45. Prior to issuance of an occupancy permit or final inspection approval, the applicant shall update, sign, and submit an as-built *LEED NC Checklist* reflecting final as-built conditions, including the total score, to the project planner. If project is eligible for PG&E's Savings by Design program, documentation of the conservation analysis shall be submitted. All features necessary for LEED certification shall be completed prior to issuance of an occupancy permit or final inspection approval.
46. **(Child Care/Housing Fees)** In accordance with a schedule determined by the Office of Economic Development (OED), the applicant shall pay an initial portion of the child care mitigation fees (and housing fees, if any) required under BMC Chapter 22.20 prior to occupancy, and shall pay the remainder of the required fees after occupancy.
47. Prior to issuance of an occupancy permit or final inspection approval for 2600 Shattuck, the applicant shall provide a letter of agreement with a car sharing service, such as City Carshare or ZipCar, to provide, free of charge, two parking spaces in the project's commercial garage for shared vehicles. If the applicant is unable to find a car sharing service that is willing to provide vehicles in the project, the applicant shall provide letters from City Carshare and ZipCar stating the reasons they are not willing to do so. The Zoning Officer shall have authority to require further documentation as necessary to verify that the applicant has made a good faith effort to provide the two parking spaces required in this condition.
48. Prior to issuance of an occupancy permit or final inspection approval for 2600 Shattuck, the applicant shall sign a memorandum of understanding containing procedures for providing the transit passes required in Condition 81 below.
49. All owners of record of 2600 Shattuck Avenue shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. The notice shall restrict the use of 10 parking spaces (20 spaces if Option B in Condition 10 is selected) in the underground garage at 2600 Shattuck Avenue to serve 2598 Shattuck Avenue, and 4 spaces in the same garage to serve 2037 Parker Street. The notice shall state that these 14 (or 24) spaces cannot be used so as to prevent the use of the parking that is being provided in compliance with the requirements of the City, unless the restriction is removed by the City. The City shall remove the restriction from the property upon submission of satisfactory evidence that other parking that meets the requirements of this Ordinance has been provided.

Restaurant Use:

50. Hours of operation for a full-service restaurant within the subject building during which customers may be present shall be limited to between 7:00 a.m. and 12:00 midnight, seven days per week. Customer service before or after these hours shall not occur without prior approval by the Zoning Adjustments Board.
51. Cooking odors, noise, exterior lighting and outdoor operation of sidewalk café seating shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
52. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
53. Changes to the building's facade, including new doors, windows, signs, or awnings, and venting mechanisms for the full-service restaurant are subject to Design Review approval prior to issuance of a building permit.
54. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
55. The operator of the proposed restaurant shall place a waste receptacle near the entry and shall ensure that the sidewalk in front of the establishment and within 50 feet thereof remains clean.
56. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
57. If the operator of the restaurant is any person other than the applicants who are referred to in finding 8(c), that operator shall apply to the Zoning Adjustments Board for a finding of public convenience and necessity under BMC Chapter 23E.16.
58. The Zoning Adjustments Board shall have the authority to modify or revoke this Use Permit upon finding that the food service establishment violates any of these conditions or is detrimental to persons residing or working in the neighborhood, to property and improvements in the neighborhood or to the general welfare of the City. In making this finding, the Board may rely upon neighborhood complaints, Police Department calls for service, and any other indicators of a recurring impact upon the

neighborhood or City. AS –in 651 Addison the authority to modify or revoke is on the Zoning officer, not ZAB

59. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner.

Alcohol Service

60. Pursuant to BMC Section 23F.04.010, alcohol sales “may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary (food service) use.” In addition, the California Department of Alcohol Beverage Control (ABC) allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
61. No sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
62. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
63. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete a course in Responsible Beverage Sales and Service (RBSS) through the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.
64. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to opening the restaurant.
65. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
66. The applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:
- A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
 - B. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
 - C. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
 - D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the

availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

67. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
68. There shall be no service or consumption of alcohol on the public right-of-way.

Sidewalk Café Seating:

69. Prior to placement of seating, the permittee shall demonstrate possession of liability insurance in the amount of at least one million dollars (\$1,000,000). Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney. Prior to commencement of said operation, the permittee shall demonstrate proof that they have said insurance.
70. Sidewalk Cafe Seating shall remain in the location and configuration shown on the approved site plan, and the number of tables and chairs shall not be increased without prior approval of the Zoning Officer.
71. At least half of the seats shall be wheelchair accessible. Accessible tables shall have clear floor space with minimum dimensions of 30 inches by 48 inches, maximum height of 34 inches, and minimum knee space of 27 inches high, 30 inches wide and 19 inches deep.
72. All Sidewalk Cafe Seating components shall be stored in a secure location on private property when not in use.
73. The permittee shall regularly inspect and clean the Sidewalk Cafe Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be placed immediately inside the entrance of the establishment.
74. The permittee shall monitor and control the use of the Sidewalk Cafe Seating so as to prevent disturbance of the surrounding neighborhood. The permittee shall give surveillance to public areas near their premises and otherwise attempt to inhibit conduct which might disturb the peace and quiet of residential uses in the vicinity.
75. Pursuant to BMC Section 12.70.030, smoking is prohibited in the Sidewalk Cafe Seating, and "No Smoking" signs shall be conspicuously posted in the seating area.
76. Sidewalk Cafe Seating shall not be used before 7 a.m. or after 10 p.m. without prior approval of the Zoning Officer. The Zoning Officer may modify these hours as necessary to avoid detriment or to achieve conformance with revised City standards or policies.

77. If the seating authorized by this Use Permit is found to be in conflict with existing or proposed public facilities or improvements, such seating shall, upon written demand of the City Manager or his/her designee, and at the sole expense of the permittee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said demand within a reasonable period of time, the City may relocate such seating at the expense of the permittee. Noncompliance shall also be a violation of the Ordinance.
78. Permittee's Liability: By accepting this Permit, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged by reason of the permittee's installation, operation, maintenance or removal of said Sidewalk Cafe Seating.
79. No fixed-base umbrellas are allowed. The permittee shall restrict the location of the chairs and tables to the location described herein, and as required by Land Use Planning and the Department of Public Works. No tables or chairs are permitted within six (6) feet clear space as specified.

Inclusionary Housing Requirements:

80. Affordability Requirements.

- A. Applicability. This condition is intended to implement Option A in Condition 10 above. However, if the applicant selects Option B, the provisions of this Condition that are applicable to inclusionary homeownership units, including the two units located on the R-2A portion of the site that qualify the project for a density bonus, shall apply to all inclusionary units provided under Option B.
- B. Number/Type of Below Market Rate Units. 2598 Shattuck shall contain 28 rental units, which shall comply with the City's Inclusionary Housing requirements (BMC Chapter 23C.12) for rental units, as indicated in Table 1 below. 2600 Shattuck shall contain at least three (3) inclusionary ownership units in accordance with BMC Chapter 23C.12, two (2) of which shall be located on the R-2A portion of the site and shall also be subject to Govt. Code Section 65915 as units qualifying the project for a density bonus. These affordability levels shall apply for the life of the project (both 2598 and 2600 Shattuck), except that the requirements of Section 65915 shall apply for 30 years from the date of the certificate of occupancy. If the applicant does not select option A, the provisions of this condition applicable to inclusionary ownership units shall apply to such units.
- C. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Chapter 23C.12, Government Code Section 65915, 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. Rents, sales prices, and income

qualifications for the BMR Units shall be as set forth in the following Table and paragraphs of this condition.

Table 1. Affordability Requirements Under Govt. Code § 65915 and BMC Chapter 23C.12.

Year	2600 Shattuck (Condominium Units)		2598 Shattuck (Rental Units)	
	Qualifying Household Income	Maximum Housing Payments	Qualifying Household Income	Maximum Housing Payments
1-30	80% AMI	<i>Units on R-2A portion: 30% of 70% AMI Unit on C-SA portion: 3 times 80% AMI</i>	81% AMI, except that if Section 8 subsidies are available, half of the units shall be at 50% AMI.	30% of 81% AMI, except that if Section 8 subsidies are available, half of the units shall be at 30% of 50% AMI or Section 8 rents.
31+	Same as above.	3 times 80% AMI	Same as above.	Same as above.

Note: *Italicized text* indicates requirements of Govt. Code Section 65915. Requirements are otherwise from BMC Chapter 23C.12.

D. Affordability and Income Qualification Requirements for Units Providing Qualification for Density Bonus Under Government Code Section 65915 (Density Bonus). For purposes of qualifying the project for a density bonus under Government Code Section 65915, the affordability requirements indicated in italics in Table 1 above shall apply for 30 years from the issuance of a certificate of occupancy by the City of Berkeley. This 30-year period of deeper affordability is required in addition to the affordability requirements mandated by the City's Inclusionary Housing Ordinance, BMC Chapter 23C.12, which apply for the life of the project. In addition, the following provisions shall apply:

1. Maximum homeowner payment or rent, as applicable, shall be adjusted for the family size appropriate for the unit as defined in Health and Safety Code Section 50052.5(h), provided, however, that if the household size standards in Table 2 of this Condition would result in a lower housing payment for a particular unit or units than under Section 50052.5(h), the standards in Table 2 shall be applied to such unit or units.
2. 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.
3. Sales Price shall be calculated based upon a maximum monthly housing payment which includes mortgage principal and interest, property taxes, fire and casualty insurance covering replacement value of the improvements,

property maintenance and repairs, a reasonable allowance for utilities as described above in subsection D.2 and homeowner association fees.

E. Berkeley Inclusionary Housing Ordinance Requirements. At the termination of the affordability period required by Government Code Section 65915, and for the remaining life of the project, the project affordability shall be determined pursuant to the City's Inclusionary Housing Ordinance, BMC Chapter 23C.12, as set forth in Table 1. In addition, the following provisions shall apply:

1. Gross rents shall include an allowance for utility costs, as published and updated by the Berkeley Housing Authority, in accordance with the Inclusionary Housing Ordinance.
2. Gross rent levels of units rented pursuant to the Section 8 Program or its equivalent shall be determined by the regulations of that Program.
3. These requirements apply regardless of whether the residential part of the project is held in condominium or undivided ownership, and regardless of whether an underlying condominium map has been filed.
4. For BMR Units that are sold as condominiums, allowable sale prices shall be determined in accordance with City Council Resolution No. 61,497-N.S.

F. Determination of Area Median Income (AMI).

1. The "AMI" (Area Median Income) shown in Table 1 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.
2. Except as stated in Paragraph D.1 above, the applicable AMI for the purpose of determining the allowable rent and allowable sales price for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with Table 2 below:

Table 2. Determination of AMI Based on Unit Size

Unit Size	Applicable AMI Standard
Under 400 sq. ft	AMI for a one person household
400-599 sq. ft.	AMI for one person household plus one quarter of the difference between the AMI for a one person household and for a two person household
600-699 sq. ft.	AMI for one person household plus one half of the difference between the AMI for a one person household and for a two person household
700-849 sq. ft.	AMI for a two person household
850-999 sq. ft.	AMI for a three person household
1,000-1,199 sq. ft.	AMI for a four person household
1,200 sq. ft or more	AMI for a six person household

- G. In the event BMR rental units are sold into individual condominium ownership and are subsequently rented out, they shall be rented at levels in accordance with the affordability and eligibility requirements that would apply to BMR units that are rented to households with an income not exceeding 81% of AMI.

At All Times:

- 81.** The applicant shall provide discounts for at least two AC Transit Easy Passes per dwelling unit for the first 40 years after project occupancy. The discount shall be at least 50 percent of normal retail value. The applicant shall also provide regular reports documenting compliance with this condition, subject to procedures developed by the Zoning Officer in consultation with the Public Works Transportation Division.
- 82.** In order to promote a more attractive and pedestrian oriented street frontage, occupants of the commercial spaces shall not block ground floor windows with shelving, furniture, blinds, curtains, or other window coverings, or any other object that would substantially reduce visibility into the commercial space. Window displays and signage conforming with City regulations shall be permitted.