

ATTACHMENT 1

FINDINGS & CONDITIONS JULY 28, 2016

2067 University Avenue

Use Permit #ZP2015-0266 to demolish an existing 4,862 square foot, one-story commercial building and construct a 31,977 square foot, seven-story mixed-use development with 50 dwelling units, 1,500 square feet of commercial space on the ground floor, and 48 bicycle parking spaces.

PERMITS REQUIRED:

- Use Permit for the demolition of the existing commercial building, pursuant to BMC Section 23C.08.050.A;
- Use Permit to establish a mixed-use development involving commercial, conference, and hotel uses in one building pursuant to BMC Section 23E.68.030.A;
- Use Permit to construct more than 10,000 square feet of new floor area, pursuant to BMC Section 23E.68.050;
- Use Permit to make an in-lieu fee payment to reduce the on-site requirement for privately-owned public open space, pursuant to BMC Section 23E.68.070.D;
- Use Permit to make an in-lieu fee payment to reduce the number of required vehicle parking spaces, pursuant to BMC Section 23E.68.080.D;
- Administrative Use Permit to allow for an increase in building height to accommodate a mechanical penthouse and elevator override, pursuant to BMC Section 23E.04.020.C;

WAIVER/MODIFICATIONS PURSUANT TO STATE DENSITY BONUS LAW:

- To exceed the maximum 60-foot height limit to permit an additional story;
- To eliminate the required 5-foot setback on the portion of the building greater than 65 feet from lot frontage and more than 20 feet in height.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”). The proposed project (a) is consistent with the applicable General Plan designation and policies and with the applicable zoning designation and regulations; (b) occurs within the Berkeley city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) site was previously developed and has no value as habitat for endangered, rare or threatened species; (d) would not result in any significant effects related to traffic, noise, air quality or water quality; and (e) site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site

pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

Pursuant to BMC Section 23B.32.040, the ZAB finds that the proposed project, 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 of neighborhood of such proposed use or be detrimental to 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 a higher-density development in proximity to regional transit, shops and amenities. The project site is location within the Downtown Mixed Use District (C-DMU), Outer Core Area, as identified in the City's Downtown Area Plan (DAP). It will create 50 dwelling units, including 38 one-bedroom apartments (two that include one bedroom and one office), and 12 two-bedroom apartments. Four (4) of the units will be affordable housing units for very low-income residents. The proposal also includes 1,500 square feet of commercial space and 48 secure interior bicycle parking spaces on the ground floor. The Project site is well served by public transportation, including a BART station three blocks away. There are also bus stops less than one block from the site that provide access to five different AC Transit bus routes including a transbay route (Route FS), an all-nighter (Route 800), as well as connections to intercity express routes. The surrounding commercial district includes retail sales, restaurants, offices, mixed-use developments, and institutional uses; the Project will add to these commercial uses and add population to support these uses.
- B. The neighborhood is a mix of residential and commercial uses, including offices, food service establishments, and personal service establishments. Existing structures in the neighborhood vary in height up to seven stories. Proposed massing has a strong street wall presence at the property line on University Avenue with recessed entrances for the main residential lobby and an adjacent café tenant space. The rear elevation is set back 8' from the north property line and allows for two garden units on the ground level. The massing is set in on both sides in the middle, allowing for light and air to the units in the center of the plan. Ground floor storefront design uses the larger floor area for additional glazing and transom elements, and extends similar proportions as the storefront openings adjacent to the east. Exterior materials proposed include a rain screen cladding, painted exterior cement plaster, Aluminum storefront windows, aluminum residential windows with corresponding spandrel panels, and frameless glass railings at the roof deck and a frameless glass cornice below. The project is compatible with the visual character and form of the District and no designated landmark in the vicinity would be adversely affected.
- C. The building construction will attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC) or the equivalent as determined by the Zoning Officer, and will be in compliance with Title 24 of California's Building Standards Code. The project's sustainability features include: solar panels, drought-tolerant landscaping, and facilities to encourage bicycle use. The project is consistent with the City's Climate Action Plan and General Plan Implementation Strategies.

- D. Pursuant to BMC Section 23E.68.080.D, the City finds that the project is required to provide 19 parking spaces. However, the applicant will not provide any parking and instead will pay an in-lieu fee. The fee schedule adopted by the Council by resolution (66,178) set the fee at \$15,000 per space for spaces 1-5 waived or reduced, \$20,000 per space for spaces 6-15 waived or reduced, \$25,000 per space for spaces 16-25 waived or reduced, and \$30,000 per space for spaces 26 and greater waived or reduced. Payment of the fee is required as a Condition of Approval. In place of parking spaces, the development will include a minimum of 48 secure interior bicycle spaces. The property owner will be required, as a Condition of Approval, to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.
- E. Pursuant to BMC Section 23E.68.070.D, the City finds that the project provides sufficient private usable open space for project residents. The Design Review Committee (DRC) has reviewed and approved the plan for the balconies and rooftop open space, subject to final design review. Furthermore, the project will be subject to the Streets and Open Space Improvement Plant (SOSIP) fee.
- F. Pursuant to BMC Section 23E.04.020.C, the City finds that the proposed rooftop equipment, including trellises, stairwells, and an elevator extension, that exceeds the district height limit (75 feet) would total 393 square feet, which is 8.6% of the average floor area of the building. The open rooftop area would be used as common open space for the residents of the building and none of the equipment structures would be used as habitable or commercial space.

III. DENSITY BONUS FINDINGS

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

- A. Under the City's methodology for implementing density bonuses under Government Code Section 65915, the "base project" consists of 37 dwelling units.
- B. The applicant has committed that four (ten percent) of the units in the 37-unit "base project" will be affordable to very low income households, as more fully set forth in Affordability Requirements Conditions of Approval. Under the requirements of Government Code Section 65915(b) and (f), this commitment entitles the project to a density increase of 32.5 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, plus additional concessions or incentives. This equates to a density bonus of 13 units, after rounding.
- C. The applicant has requested modifications to exceed the maximum 60-foot height limit to propose an additional story and to reduce the required 5-foot setback on the portion of the building greater than 65 feet from lot frontage and more than 20 feet in height.

IV. DEMOLITION OF EXISTING BUILDING

Pursuant to BMC Section 23C.08.050.D, the Zoning Adjustments Board finds that the proposed demolition of the existing building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City because the building does not provide any substantial benefits to the neighborhood or the City that would equal the benefits of the proposed project. Furthermore, on May 5, 2016, the Landmarks Preservation committee (LPC) considered information regarding the history of the building and took no action to initiate Landmark designation. The City finds that this demolition is necessary to allow construction of the proposed mixed-used building.

V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

1. Conditions Shall be Printed on Plans

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

2. Applicant Responsible for Compliance with Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Indemnification Agreement

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

VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

- 10. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
- 11. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

Project Liaison _____
Name Phone #

- 12. Percent for Art. The City Council is considering a One Percent for Art obligation on private development projects. Projects on which the obligation is required include, but may not be limited to: all new multifamily residential buildings of five or more units, commercial buildings, industrial buildings, and additions of 10,000 or more square feet made to existing structures of the same types. The Ordinance is anticipated to require owners of subject properties to provide publicly accessible art in the project, valued at 1%

of construction costs of the overall project, or to pay an equivalent in-lieu fee. If the requirement is adopted by the Council prior to issuance of a building permit for this project, the applicant shall provide the art as noted, or pay the fee at the time of issuance of a building permit to construct the project.

- 13. Construction Noise Management - Public Notice Required.** At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
- 14. Construction Noise Reduction Program.** The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - Prohibit unnecessary idling of internal combustion engines.
 - If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - Route construction related traffic along major roadways and away from sensitive receptors where feasible.

15. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
16. Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
17. Compliance with Conditions and Environmental Mitigations. The building permit application is subject to verification of compliance to the applicable Mitigations required for the DAP EIR and all Conditions of Approval contained herein. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use 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 these Conditions of Approval 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; any unused deposit will be refunded to the applicant.
18. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
19. Streets and Open Space Improvement Plan: Street Frontage Improvements. Consistent with the Streets and Open Space Improvement Plan (SOSIP), and the Downtown Area Plan, the developer shall construct and install the curb, gutter, sidewalk, dividers, street trees, benches and planters along the project's street frontage, including University Avenue, consistent with the Streets and Open Space Improvement Plan (SOSIP), or subsequent iterations as adopted by the City. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works Department, and constructed prior to occupancy.
20. Parking In-Lieu Fee. Consistent with BMC 23E.28.080.D, the applicant shall pay a fee in lieu of providing each required vehicle parking. As set by the City Council, the graduated fee is as follows: \$15,000 for each space 1-5, \$20,000 for each space 6-15, \$25,000 for each space 16-25, and \$30,000 for each space above 25. The in lieu fee will be deposited into a fund established by the City that provides enhanced transit services.
21. Streets and Open Space Improvement Plan Impact Fee: As required by BMC Section 23E.68.075, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as may be adopted by the City Council. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund

(SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. "Gross Floor Area" shall be as defined in BMC Section 23F.04.010.

The fee shall be calculated and assessed consistent with the policies of the *Downtown Area Plan Streets and Open Space Improvement Fee Nexus Study*, (Draft July 2011,) or subsequent iterations as adopted by the City Council. At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project. The fee shall be paid according to a schedule established by the City Manager or his/her designee.

22. Green Building Certification. The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.
23. Encroachment Permits. A separate permit application shall be filed for each minor encroachment in the office of the Assistant City Manager for Public Works. Such application shall be accompanied by a sketch or plan showing the dimensions and exact location of the proposed encroachment and its relationship to any structure, and the sidewalk area. A plan and elevations shall be required in all cases in addition to a brief written description of the encroachment. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five (5) feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.
24. Savings By Design. The applicant shall submit documentation to the project planner verifying that an application to the [Savings By Design](#) program (either the [Whole Building form](#) or the [Systems Approach form](#)) was submitted to PG&E. This documentation shall include a copy of follow-up documentation between PG&E and the applicant, including a Savings By Design Energy Efficiency Form with a completed Preliminary Savings Estimate.
25. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
26. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.

27. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
28. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
29. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
30. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1st Floor.
31. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3rd Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for: a) all new commercial, industrial and mixed use development and all large improvement projects; b) all new residential buildings with 5 or more dwelling units located in the Environmental Management Area (EMA) – available online at:
http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
* If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

AFFORDABILITY REQUIREMENTS:

32. Number of Below Market Rate Units. The project shall provide four (4) below market rate rental dwelling units ("BMR Units"), which are required to comply with the State Density Bonus Law (Government Code Section 65915) as well as four (4) below market rate units to comply with BMC Section 22.20.065.D. The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.
33. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Section 22.20.065, and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are

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

In addition, the following provisions shall apply:

- Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5(h).
- Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
- BMR units will be provided for the life of the project under BMC Section 22.20.065.

Determination of Area Median Income (AMI). The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income. The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

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

Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

Prior to Construction:

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

During Construction:

- 35. Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
- 36. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks or pedestrian paths
 - Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
 - Storage of building materials, dumpsters, debris anywhere in the public ROW
 - Provision of exclusive contractor parking on-street relevant
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 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 TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 37. Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.

38. Extreme Construction Noise. Construction activities that may generate extreme noise (noise greater than 90 dBA) at nearby sensitive receptors should be limited to the hours between 8 a.m. and 5 p.m., Monday through Friday. Any work that may generate extreme noise at nearby sensitive receptors outside of these hours, or that needs to occur on a Saturday, must first go through the approval and notification process described above. Additionally, if complaints regarding noise are received from occupants of buildings potentially exposed to extreme noise during project construction, the noise liaison shall implement noise monitoring, if appropriate and feasible, to determine and document whether the measures instituted to correct the problem are effective. The results of any noise monitoring conducted, as well as a description of the noise reduction measures implemented, shall be provided to the Zoning Officer for review.
39. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements,

including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

- All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
- Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

40. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne

toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

41. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
42. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
43. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
44. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
45. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
46. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

47. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
48. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated Received June 21, 2016, except as modified by conditions of approval.

49. Affordable Housing. Prior to Certificate of Occupancy, for rental projects, the project shall be consistent and in compliance with the Affordable Housing Mitigation Fee requirements of BMC Chapter 22.20.
50. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.
51. Green Building Certification. The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.
52. Savings By Design. The applicant shall provide the project planner with an updated Savings By Design Energy Efficiency Form that includes a completed Final Savings for the project. If the applicant has requested that PG&E complete this form and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to submit the form to the project planner with the expected date.

At All Times:

53. Exterior Lighting. All exterior lighting shall be energy efficient if feasible and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
54. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
55. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and Landmarks Preservation Commission approval.
56. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
57. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.

58. Residential Permit Parking. Consistent with BMC Section 23E.68.080.F, no Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
 59. Bike Parking. Secure and on-site bike parking for at least 48 bicycles shall be provided for the life of the building.
 60. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial land uses, and that each occupant shall not seek to impede their lawful operation.
 61. Transportation Demand Management. A Transportation Demand Management compliance report shall be submitted to the Transportation Division Manager, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements and the following:
 - A. Consistent with BMC 23E.68.080.H, and subject to the review and oversight of the Transportation Division Manager, the cost equivalent to an unlimited local bus pass shall be provided on a Clipper Card, or equivalent card that can be used by major Bay Area transit systems, shall be provided, at no cost, to every employee.
 - B. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.
 - C. Exceeding BMC 23E.68.080.H, and subject to the review and oversight of the Transportation Division Manager, the cost equivalent to an unlimited local bus pass shall be provided on a Clipper Card, or equivalent card that can be used by major Bay Area transit systems, shall be provided, at no cost, two per residential unit.
 - D. Transit information shall be provided in the residential lobby, updated at a minimum once a year. The information panels shall be shown in the construction drawings and shall be installed **prior to occupancy**.
 - E. Transportation Information Officer will gather and provide information regarding transit and other alternative transportation to residents and commercial tenants and their employees. Information may pertain to the City, regional transit agencies, car sharing, Spare the Air, 511 and other relevant programs. This information package shall be provided to all residents/employees on arrival plus once a year.
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