

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

MAY 10, 2018

### 3000 Shattuck Avenue

Use Permit #ZP2015-0229 to demolish a gas station structure and construct a five-story, 40,680 square foot mixed-use building with ground-floor retail uses and 23 dwellings (to include four BMR) on the upper 4 stories

#### PERMITS REQUIRED

- Use Permit for a Mixed Use Development of 5,000 sq. ft. or more in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit for demolition of a non-residential building, under BMC Section 23C.08.050;
- Use Permit for the construction of more than 3,000 square feet of gross floor area, under BMC Section 23E.52.050;
- Use Permit to exceed the maximum height requirement of 36 feet, 3 stories for a mixed use building, under BMC Section 23E.52.070.D.7;
- Use Permit to modify side, front and rear setbacks, under BMC Section 23E.52.070.D.7;
- Use Permit to exceed 40% lot coverage, under BMC Section 23E.52.070.D.7;
- Use Permit to allow for a reduction in the off-street parking required for dwellings, under BMC Section 23E.52.070.D.7;
- Administrative Use Permit for a Quick/Full Service Restaurant with more than 1,000 square feet, under BMC Section 23E.52.030.A; and
- Administrative Use Permit for Rooftop Equipment to exceed the C-SA District height limit, under BMC Section 23E.04.020.

#### I. CEQA FINDINGS

The Zoning Adjustments Board has considered the proposed negative declaration together with any comments received during the public review process, and finds, on the basis of the whole record before it, that: (1) no potentially significant effects were identified that could not be addressed by the City's standard conditions of approval which would avoid or reduce the effects to a point where clearly no significant effects would occur, (2) there is no substantial evidence the project will have a significant effect on the environment, and (3) the negative declaration reflects the lead agency's independent judgment and analysis. The record of proceedings upon which this decision is based is located at the Permit Service Center, 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704.

#### II. FINDINGS FOR APPROVAL

As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

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

1. Although the proposed five-story, 40,680 square foot building would be greater in height and volume than immediately surrounding development more recent construction, however, it contributes to similar or greater heights and volumes along the length of the Shattuck Avenue including the five-story buildings at 2600 and 2598 Shattuck. Additionally, more recently submitted and entitled projects contribute similar or greater heights and development pattern along the major corridors in the South Area Commercial district. Such projects include the six-story building located at 2902 Adeline Street, a proposed five-story mixed use development at 2701 Shattuck Avenue. The project is broken down into smaller discreet masses through individual dynamic roofs and color differentiation. The proposed massing is consistent with recent development and contributes to the continued evolution of such transit rich corridors within Berkeley as Shattuck and Ashby Avenues with in-fill development that is compatible with existing development patterns.
2. The proposed project provides a 5' to 7' setback adjacent to the existing mixed use building to the west (2076 Ashby Avenue) with portions built to the lot line. Additionally, the building steps down from five stories along Ashby Avenue (northern property line) to three stories along the southern lot line. A 5'6" setback is provided adjacent to the single-family dwelling at 3010 Shattuck Avenue (to the south), and the adjacent parking area is completely enclosed. The remaining portion of the ground floor and upper floors are setback 15'. Additionally, the second story courtyard also steps the building back of approximately 50'
3. To provide a residentially scaled and appealing pedestrian oriented experience, the building is designed with a varying 0 to 6' setbacks along the Ashby Street frontage and varying 0 to 3' setbacks along the Shattuck Street frontage. The building entries are recessed and marked with large glass areas and awnings, and the corner is marked by prominent flexible commercial space with 17' floor-to-ceilings height.

**B. PARKING** -- Based on the project attributes and conclusions in the Transportation Impact Analysis, the City finds the proposed parking and traffic impacts of the project will not be detrimental for the following reasons:

1. The project will include 6 vehicle spaces in the ground level garage. Although the proposal represents 35 spaces less than the 41 spaces required by Code the reduction in the required on-site parking will be mitigated through several factors. Based on the project attributes and conclusions in the Transportation Impact Analysis, the City finds the proposed parking and traffic impacts of the project will not be detrimental for the following reasons:
  - The project is proposing 48 bicycle parking spaces for residential use although there is no residential bicycle parking requirement. To ensure the bicycle parking is effective and utilized (and to meet the requirements of the Berkeley Municipal Code) it has been provided in an easily accessible bike storage room that would be accessed directly from the lobby of the building.
  - There are numerous shopping, employment and education centers in the area.
  - There are numerous existing car sharing locations 0.5 miles of the project site.
  - There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along Shattuck and Ashby Avenues. Routes 18, 80 and 81, an all-nighter (Route 800) operate directly adjacent to the project site and one Transbay route (F)

less than two blocks from the site as well as the Ashby BART Station approximately a 5 minute walk (0.3 miles) from the site to the west.

- As required for projects requesting a parking waiver and as conditioned in the project approval; occupants of the building will not be eligible for Residential Parking Permits (RPP).
2. Pursuant to BMC Section 23E.52.090.C, the Zoning Adjustments Board finds that residential parking may be reduced from 33 spaces to 11 spaces for the following reasons:
- To allow the ground floor to include retail and/or food service use(s), a residential parking reduction is required.
  - To comply with BMC Section 23E.52.090.B.1, the parking reduction would allow a portion of the ground floor to be used for retail and/or food service use(s) which will be compatible with the purposes of the District as food service will provide locations for community-serving businesses (Purpose B); provide lower intensity community Commercial Uses, which serve as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue (Purpose C) and will be pedestrian-oriented (Purpose G).
  - To comply with BMC Section 23E.52.090.C.1, to encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building the Board has conditioned this approval to require that each dwelling unit to be offered subsidized transit vouchers, or unlimited local bus passes provided on a Clipper Card, or equivalent card that can be used by major Bay Area transit systems, or any combination of each.
3. Pursuant to BMC Section 23E.28.140.B, the Zoning Adjustments Board finds that the non-residential parking may be reduced 6 spaces for the establishment of a retail tenant and café/quick serve restaurant as it is one-third of a mile from BART and will allow the provision of a 1,926 square foot Retail store and a 1,700 square foot Food Service Establishment which satisfies BMC Section 23E.28.140.B.1.d. To comply with BMC Section 23E.28.140.B.2.b, to ensure that the parking reduction for the commercial uses (Retail Stores and/or Food Service Establishment) would not substantially reduce the availability of on-street parking in the vicinity, the Board has conditioned this approval to require at least one transportation benefit at no cost to every commercial tenant subject to the review and oversight of the Transportation Division Manager. This parking reduction is also subject to a condition to limit the use of the non-residential floor area as only 1,700 square feet of quick or full service food use is allowed and the balance of the non-residential floor area must only be used by Retail Stores and/or uses with an equivalent parking standard.

**C. SHADOWS** -- The project proposes to construct a five-story building on what is currently developed with smaller one-story structures. As such, the project is expected to create greater shadowing impacts over existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project.

The shadow studies illustrate that the during the summer months the abutting mixed use building to the west (2076 Ashby) and the car rental service and the duplex and multi-family residence along Shattuck Avenue to the east will receive new shadows during the morning and evening hours respectively. The shadows will impact the eastern facing windows of the bedrooms of the residential units at 2076 Ashby. During the winter months, new shadows

will impact the car service use and the gas station site to the north primarily during morning hours.

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

#### **D. MISCELLANEOUS**

1. The project will provide 23 housing units, with 4 below market rate units (2 units would be provided at VLI and 2 of the units would be provided at LI) and the remaining balance will be paid as a fee, which will help the City to meet its housing goals and provide housing for an economically diverse population.
2. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, as well as basic goods and services.

#### **III. REQUIRED C-SA FINDINGS FOR APPROVAL**

- A.** Pursuant to Berkeley Municipal Code Section 23E.52.090.B.1, the City finds that the Zoning Adjustments Board finds that the project will be compatible with the purposes of the of the C-SA South Area Commercial Zoning District, as follows:
1. The project it implements the Neighborhood Commercial area policies of commercial uses oriented to the street and sidewalks to encourage a vital and appealing pedestrian experience. The commercial frontages are designed to operate in a manner compatible with adjacent residential areas and will enhance the area's pedestrian environment.
  2. The project will provide a transition in intensity of commercial serving uses, including basic goods and services that serve local neighborhood needs, between the Downtown area and the neighborhood-serving area south of Ashby Avenue and will be compatible with surrounding retail and residential uses.
  3. The project will provide residential development for people who desire the convenience of location and more open space that is available in Downtown, as the project provides 2,034 square feet of shared Usable Open, as well as private balconies, which exceeds the District's requirement.
  4. Additionally the project will also meet the policies of the South Berkeley Area Plan as it involves the construction higher density housing in area with easy access to retail activity, the workplace and public transportation. The project also includes four new affordable housing units.
- B.** Pursuant to BMC Section 23E.52.090.B.2, as discussed in Findings above, the project will be compatible in design and character with the District and the adjacent residential neighborhoods.
- C.** Pursuant to BMC Section 23E.52.090.B.3, the project will provide a limited amount (3,626 square feet) of commercial space that will be divided up into two commercial tenants. The size

of the tenant spaces alone will ensure that the project will not result in the domination of one type of commercial/retail use in any one area of the District.

- D. Pursuant to BMC Section 23E.52.090.C, the City finds that the mixed use project, which requests to modify the required height, lot coverage, setbacks, and off-street parking requirements, is permissible as it will encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building because the project is within walking distance to public transit, jobs, goods and services. It will facilitate the construction of a minimum of seven affordable dwelling units as defined by HUD Guidelines. In addition, it will encourage the development community serving businesses and amenities that will support pedestrian-oriented uses

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

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Pursuant to BMC Section 23C.08.050.C, the City finds that the proposed demolition of the existing building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City because the buildings are not architecturally or historically significant and do not provide any substantial benefits to the neighborhood or the City. Furthermore on February 6, 2016, the Landmarks Preservation Commission (LPC) considered information regarding the history of the buildings and took no action to initiate them as landmarks or structures of merit. The proposed building will provide replacement floor area with retail or food services within a building that is designed to be more pedestrian friendly than the existing gas station building and use. The demolition is required in order to allow the construction of the proposed mixed-use, multi-family building.

#### **V. FOOD SERVICE FINDINGS**

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Pursuant to BMC Section 23E.52.090.B, the Zoning Adjustments Board finds that the food service use of more than 1,500 square feet is compatible with the purposes of the District as food service would provide locations for community-serving businesses (Purpose B) and provides lower intensity community Commercial Uses, which serve as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue (Purpose C) a pedestrian-oriented use (Purpose G), and would not result in the domination of one type of commercial/retail use in any one area of the District (Finding 23E.52.090.B.3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Indemnification Agreement**

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

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

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

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

- 10. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.
- 11. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

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

**Affordability Requirements (12-15)**

- 12. Number of Below Market Rate Units. The project shall provide four (4) below market rate rental dwelling units ("BMR Units") restricted to Very Low Income (VLI) Households and which satisfy BMC Section 22.20.065. The initial location of the BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR units shall conform to the addresses assigned to the building by the City.

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

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

In addition, the following provisions shall apply:

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

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

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

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

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

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

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



15. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.
16. 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.
17. One Percent for Art: Consistent with BMC Section 23C.23, prior to issuance of a building permit the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
18. 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.
19. 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.

20. 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.
21. 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.
22. 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.
23. Electric Vehicle (EV) Charging. At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
24. 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).
25. 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.
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. 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.
28. Parking for Disabled Persons. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."
29. Parking demonstration of feasibility. The parking area shall meet all City Traffic Engineering requirements. The location and layout of the parking spaces shall demonstrate of feasibility with a test of the maneuvering using Autoturn or field tested subject to the review and oversight of the City's Traffic Engineer.
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, 1<sup>st</sup> Floor.
31. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3<sup>rd</sup> Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
  - A. Phase I & Phase II Environmental Site Assessments (per ASTM 1527): A recent Phase I ESA (less than 2 years old) shall be submitted to the TMD for developments for:
    1. All new commercial, industrial and mixed use developments and all improvement projects that require work 5 or more feet below grade.
    2. All new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA).
    3. Any available soils and groundwater analytical data available for projects listed in 1 and 2 above must also be submitted to TMD. The EMA can be viewed: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
  - B. Soil and Groundwater Management Plan: A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP shall comply with the hazardous materials and waste management standards required by Berkeley Municipal Code Section (BMC) 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No.

R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311.

The SGMP shall also include:

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

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

- C. Demolitions & Renovations: All building permit applicants must provide the City with a J number from the Bay Area Air Quality Management District (BAAQMD) for demolition permits prior to applying for permit.

In addition, contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)

- D. Building Materials Survey: A hazardous materials survey for the building is required and prepared by qualified professionals. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, PCB containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The report to the TMD shall include, in addition to the survey, plans on hazardous materials removal and disposal procedures to be implemented that fully comply with hazardous waste generator requirements (22 California Code of Regulations (CCR) 66260 et seq). If the survey identifies hazardous materials or hazardous wastes, the removal and disposal of these wastes shall follow all applicable federal, state and local rules and become conditions 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.

- E. Hazardous Materials Business Plan: A Hazardous Materials Business Plan (HMBP) in compliance with BMC 15.12.040 shall be submitted to TMD within 30 days if on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids;

500 pounds for solids; or 200 cubic feet of gases at standard temperature and pressure. This includes fuel in generators and gas cylinders.

**Prior to Construction:**

**32. 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:**

**33. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**34. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of

the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

- 35. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 36. 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.
- 37. Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
- 38. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks or pedestrian paths
  - Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
  - Storage of building materials, dumpsters, debris anywhere In the public ROW
  - Provision of exclusive contractor parking on-street relevant
  - Significant truck activity.

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

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying

dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

39. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
  - Calendar and schedule of daily/weekly/monthly construction activities
  - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
40. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
  - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
  - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
  - F. All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

- G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
  - H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
  - I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
  - K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.
  - L. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - M. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
41. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:



- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
  - Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
42. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
43. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
44. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
45. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
46. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
47. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

48. Public Works. The applicant shall inform the contractor of the potential for high groundwater and that a temporary de-watering method during construction may become necessary. Temporary construction dewatering methods may include sumps and pumps placed in a low spot within the excavations. Several sumps and pumps may be required depending on the magnitude of water encountered. The design and implementation of temporary construction de-watering is considered the responsibility of the contractor. Caution should be exercised to prevent softening of the subgrade soils exposed within the excavations. Equipment operated upon saturated subgrade soils tends to cause rutting and weakening, which will require over-excavation of the weakened subgrade. Standing water within the excavation can also cause weakening of the subgrade soils. A temporary mud slab or gravel pad may be needed at the base of the garage and/or parking lifts excavations to provide a clean, dry working area.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

49. 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.
50. 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 February 21, 2018, except as modified by conditions of approval.
51. Affordable Housing Mitigation Fee: Consistent with BMC Section 22.20.065, the applicant shall pay the affordable housing impact fee either prior to issuance of building permits or issuance of a certificate of occupancy.
52. 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.
53. 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:**

54. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
55. 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.
56. 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.
57. 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.
58. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
59. 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.
60. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
61. Residential Tenant Subsidy for Car Share or Transit. Each dwelling unit shall be offered a car sharing membership or 2 subsidized transit vouchers or unlimited local bus passes provided on a Clipper Card, or equivalent card that can be used by major Bay Area transit systems or any combination of each. If car share memberships are chosen, a one-time payment of \$30 towards usage fees shall be provided to each tenant that chooses this option. If subsidized transit vouchers are chosen, the amount of this monthly subsidy shall be equivalent to the car share memberships.
62. Parking to be Leased or Sold Separately. All residential parking spaces shall be leased or sold separate from the rental or purchase of dwelling units.
63. Bike Parking. Secure and on-site bike parking for a minimum of 48 bicycles shall be provided for the life of the building.
64. 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 and/or food service uses, and that each occupant shall not seek to impede their lawful operation.

- 65. 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. 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. 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.
  - D. 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.
  - E. The food service operation, if qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the "Guarantee Ride Home" program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager.
- 66. Transit Subsidy Condition.** As applicable to employers with 10 or more employees. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- 67. Subject to Review.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

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**FOOD SERVICE CONDITIONS**

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies

to identify and secure all applicable permits and licenses).

- 68.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
- 69.** Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours (except decreased hours in compliance with applicable ABC regulations), and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Adjustments Board.
- 70.** The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
- 71.** Only 1,700 square feet of quick or full service food use is allowed and the balance of the non-residential floor area must only be used by Retail Stores and/or uses with an equivalent parking standard. A Declaration of Restrictions shall be filed with the County Recorder, in a form satisfactory to the Zoning Officer, to limit the use of the ground floor as stated above and to ensure that any transfer of the property is specifically subject to the restrictions contained in this section.
- 72.** Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
- 73.** The hours of operation of the restaurant portion of the business shall be limited to the District hours. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation (except decreased hours in compliance with applicable ABC regulations) shall be approved by the Zoning Adjustments Board. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
- 74.** Cooking odors, noise, exterior lighting and operation of any parking area 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.
- 75.** Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses near the restaurant shall be installed (or prior installation verified) prior to issuance of an Occupancy Permit.
- 76.** 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. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide

separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.

- 77.** 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.
  - 78.** Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
  - 79.** The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
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