Findings and Conditions

AUGUST 23, 2018

2120 Berkeley Way – UC Press Building

Use Permit Modification #ZP2018-0087 to modify Use Permit #ZP2015-0153, which allowed the renovation of an existing three-story, 22,864-square-foot office building and construction of a three-story, 20,889-square-foot office space addition, to convert the ground floor retail space to office use, convert decks on floors four through six to interior office use, and add open space on the roof.

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 153332 of the CEQA Guidelines (“In-Fill Development Projects”).

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

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:

- The subject site is located within, and surrounded by the Downtown Mixed Use District, Outer Core Subarea. Current conditions surrounding the site include: two two-story vacant brown-shingle residential buildings to the east; a single-story and a four-story commercial building to the southeast, a four-story, 54-foot tall residential building (Bachenheimer Building) to the south; and single-story commercial buildings to the southwest and west. North of the project site an eight-story 320,000 square foot UC building (home of Tolman Hall). In addition, it is important to note that a six-story, 75-foot tall mixed-use building (Acheson Commons) has been approved to the east and northeast; building permits have been pulled, and a preconstruction meeting was recently held. An application has been submitted for a 12 story mixed use building to the west. The proposed modification would not alter the front façade or the maximum approved height, which is consistent and in scale with the existing development pattern of the neighborhood. Under approved or proposed plans, the building would be proportionate with the approved and pending applications on adjacent parcels. The project design uses a mixture of architectural articulations and changes in color and material
to both minimize the massing impacts and respect the scale of the residential uses to the south. The Design Review Committee (DRC) reviewed the project for its interface with the adjacent uses and found no detriment.

- The existing building has legally non-conforming (zero) front (north), side (east) and rear yard setbacks. The approved project vertically extends these non-conforming setbacks; the modified project would include additional areas of non-conformance. As described below, the modified project results in the same non-detrimental privacy and solar impacts as the approved project.

- The approved project would reduce sunlight on adjacent parcels, one of which contains residential units (Bachenheimer Building). However, new shadows were found to be non-detrimental as the reduction in sunlight on abutting properties would be limited in duration, and was below what is to be expected in the Berkeley downtown urbanized area. As demonstrated in the attached plans (see Attachment #2, sheets A5.1-5.3), the proposed building would cast shadows on to the properties to the north at 2161 Berkeley Way (UC Building) and to the south and east at 1922-30 Walnut Street (Acheson Commons, currently under building permit review) to varying degrees at different seasons. The modification would increase the square footage of floors four through six from 19,035 to 20,889 sq. ft. Any net new shadow from this net new change would be non-detrimental.

- Due to the location of the project site, which is surrounded by proposed and existing high-rise buildings, views of significant features are not generally available. East facing windows in the area may provide partially obstructed views of the East Bay Hills though these views are typically screened by intervening buildings and trees. Although the project could further obstruct views of the east Bay Hills from near buildings, such views are already partially obstructed and would not be substantially degraded.

- The proposed project abuts a residential building (Bachenheimer Building) to the south. While the continuation of the legally non-confirming rear yard setback would be directly adjacent to windows on the north façade of the Bachenheimer Building at fourth floor (the Bachenheimer is four stories), these windows are primarily associated with a circulation hallway and do not impact the privacy of tenants. There is only one unit in the north façade of the Bachenheimer Building (westernmost unit) that has its bedroom window facing north. However, the proposed revised design protects this unit by off-setting new windows so as not to create a direct line of sight. The proposed project, therefore, creates the same circumstances as the approved project where impacts to privacy were found to be non-detrimental.

- The project would promote environmental sustainability by including solar PV panels on the roof, energy-efficient LED lighting, on-site public open space and an in lieu payment to enhance public transit services.

The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing office space without parking in close proximity to Downtown BART station, AC transit lines, UC Campus, and basic goods and services in the Downtown areas.
III. REQUIRED C-DMU DISTRICT FINDINGS FOR APPROVAL

Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board (ZAB) finds that the project will be compatible with the purposes of the C-DMU District, and be compatible with the surrounding buildings, as follows:

- The project is consistent with the goals and policies of the Downtown Area Plan as discussed in the project staff report dated August 23, 2018. The design, including height, massing, materials, color, and detailing has been reviewed and recommended for approval by the DRC; and,

- The project is compatible with adjacent commercial and residential areas in that it is designed of similar scale as the abutting and confronting properties.

IV. REQUIRED FINDINGS FOR STREETS AND OPEN SPACE IMPROVEMENTS PLAN (SOSIP)

Pursuant to Section 23E.68.070.D.2, the project provides 234 square feet of privately owned public open space at the entry level where a total of 508 square feet is required; the applicant proposes to pay the in-lieu fee for remaining 146 square feet. Pursuant to Berkeley Municipal Code Section 23E.68.090.G, as development within the Downtown is on the rise, the ZAB finds that the payment of an in-lieu fee for the 274 square feet of privately-owned public open space is appropriate and will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.

V. REQUIRED FINDINGS FOR PARKING WAIVER

The proposed modification would increase the approved gross floor area from 19,035 to 20,889\(^1\) square feet. As a result, the project will be required to provide 30 off-street vehicular parking spaces (two more spaces than previously required) and a minimum of 10 secure bicycle\(^2\) parking spaces (one more than previously required). The project provides no off-street vehicular parking spaces and the applicant is proposing to pay an in-lieu fee for automobile parking spaces and provide 30 covered bicycle spaces, 20 spaces in excess of requirements.

Pursuant to Section 23E.68.090.H, the ZAB finds that the project will pay an in-lieu fee to a fund established by the City that provides enhanced transit services. The fund will assist the City in providing transit services. Providing no automobile parking will also be consistent with the District’s strategies to reduce vehicle reliance and promote alternative modes of transportation, as well as meet some of the goals of the City’s Climate Action Plan. In accordance with these policies, the project proposes installation bicycle storage for 30 covered bicycles spaces where only 10 spaces are required. In addition, the project site is in close proximity to BART, multiple AC Transit bus lines, and bicycle lanes and bicycle boulevards. The project site is in Downtown Berkeley, in proximity to goods, services, residents and employment; it is also one block from the University of California.

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\(^1\) Per BMC Section 23E.68.080.B.1, additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.

\(^2\) Per BMC Section 23E.68.080.C, the proposed project is required to provide one bicycle space per 2,000 square feet of new gross floor area.
VI. REQUIRED FINDINGS FOR ROOF-TOP PROJECTIONS

Pursuant to BMC Section 23E.04.020.C, the ZAB finds that the architectural features that will extend no more than 24” above the roof and the enclosed mechanical room for the elevator and stair roof access that will extend no more than 13’-6” above the 70’ building height may be allowed with an Administrative Use Permit, because:

- The parapet will not provide floor area and is thus not subject to the 15% or habitable space limit.

- The elevator room/stair access will only provide access to the roof and will not provide habitable space. The average floor area of all of the building’s floors is 7,321 square feet, and 15% of this total is 1,098 square feet. The total area of the elevator room/stair access is roughly 501 square feet, which is less than the 15% maximum of 1,098 square feet.
VII. 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 Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

   Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board’s policy adopted on May 24, 1978, which reduce the size of the project.

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 harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

**VIII. 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. **Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related 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. **Please designate the name of this individual below:**

   - Project Liaison ______________________________________________________  

11. **Final Design Review Conditions.** The applicant shall provide plaques outlining building and business history.
12. **Final Design Review Conditions.** The applicant shall provide clear glazing at three ground floor entry bays.

13. **Final Design Review Conditions.** The applicant shall provide color brush outs on building for review and approval by Staff with Committee assistance as needed.

14. **Address Assignment.** The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center 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.

15. **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:
   
   A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
   
   B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
   
   C. 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.
   
   D. 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.
   
   E. Prohibit unnecessary idling of internal combustion engines.
   
   F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
   
   G. 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.
   
   H. 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.
   
   I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

16. **Damage Due to Construction Vibration.** The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level assessment.
analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
- include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

Prior to Issuance of Any Building Permit:

17. Public for Art: Consistent with BMC §23C.23, 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. 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.

20. 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.

21. 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 or 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.

22. Open Space In-Lieu Fee: Consistent with BMC 23E.68.070.D, the applicant shall pay a fee in lieu
of providing 146 sq. ft. on-site open space required by this Section, to help fund the Streets and
Open Space Improvement Plan (SOSIP). If the City Council does not adopt said fee by the time
the City is ready to issue building permits, the fee shall be paid prior to Certificate of Occupancy or
building permit final.

23. Streets and Open Space Improvement Plan: Street Frontage Improvements. Streets and Open
Space Improvement Plan: Street Frontage Improvements. Consistent with the Downtown Streets
and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the
developer shall construct improvements along Berkeley Way to the centerline. Such improvements
shall be included with the building permit submittal, designed and constructed as directed by the
Public Works and Fire Departments, and constructed prior to certificate of occupancy.

24. 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) per the fee schedule adopted by the Council by resolution. 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. The fee shall apply to the
project’s “Gross Floor Area” as defined in BMC Section 23F.04.010, less any existing Gross Floor
Area removed as part of the project.

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 beyond the frontage improvements already required by this Permit. The first half of this fee
shall be paid prior to issuance of a building permit, and the second half shall be paid prior to
issuance of a certificate of occupancy.

25. Affordable Housing. As required by Resolution No. 66,617-N.S., adopted June 3, 2014, Owner
shall offset the estimated impacts of the project on affordable housing according to the following
formulas:

<table>
<thead>
<tr>
<th>USE</th>
<th>AFFORDABLE UNITS or FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office, Research + Development, Restaurant/Retail, Hotel</td>
<td>1 unit per 52,859 gross square feet</td>
</tr>
<tr>
<td>Industrial/Manufacturing, Warehouse/Storage (except “self-storage”)</td>
<td>1 unit per 105,719 gross square feet</td>
</tr>
<tr>
<td>Self-Storage</td>
<td>1 unit per 54,432 gross square feet</td>
</tr>
</tbody>
</table>

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The requirement may be satisfied by:

**Housing Production** - Owner shall cause to be constructed in the City of Berkeley of additional housing affordable to households with income at 30% of the SMSA median income. Owner must have site control and Use Permit approval for the required Affordable Housing project prior to receipt of the building permit for this non-residential project, and must secure an Occupancy Permit for the required Affordable Housing project no later than 18 months from the receipt of the Occupancy Permit for this non-residential project.

**-OR-**

**In-Lieu Fee** - Owner shall pay an equivalent in-lieu impact fee in the amounts and according to the schedule listed below

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to Building Permit</td>
<td>$31,333.67</td>
</tr>
<tr>
<td>Prior to Occupancy Permit</td>
<td>$31,333.67</td>
</tr>
<tr>
<td>1 Year from Occupancy Permit</td>
<td>$31,333.67</td>
</tr>
</tbody>
</table>

The final payment shall be appropriately secured by the City, e.g., by a letter of credit, bond, Promissory Note, Deed of Trust or another appropriate form of security. Some payments carry interest from the date they would normally be due. Applicants may request reductions to these fee amounts, under the provisions of BMC Sections 22.20.070 or 22.20.080 relating to lower levels of impact, infeasibility, or overriding benefit to the City.

**26. Child Care.** As required by Resolution No. 66,618-N.S., adopted June 3, 2014, Owner shall offset the estimated impacts of the project on affordable child care according to the following formulas:

<table>
<thead>
<tr>
<th>USE</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office, Restaurant/Retail</td>
<td>$1.25 per gross square foot</td>
</tr>
<tr>
<td>Industrial/Manufacturing</td>
<td>$0.75 per gross square foot</td>
</tr>
<tr>
<td>Hotel/lodging</td>
<td>$1.50 per gross square foot</td>
</tr>
<tr>
<td>Warehouse/Storage</td>
<td>$0.62 per gross square foot</td>
</tr>
<tr>
<td>Research &amp; Development</td>
<td>$0.80 per gross square foot</td>
</tr>
</tbody>
</table>

**In-Lieu Fee.** Owner shall pay a fee into the City’s Child Care Operating Subsidy account in the amounts and according to the schedule listed below.

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to Building Permit</td>
<td>$8,703.67</td>
</tr>
<tr>
<td>Prior to Occupancy Permit</td>
<td>$8,703.67</td>
</tr>
<tr>
<td>1 Year from Occupancy Permit</td>
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The final payment shall be appropriately secured by the City, e.g., by a letter of credit, bond, Promissory Note, Deed of Trust or another appropriate form of security. Some payments carry interest from the date they would normally be due.

Applicants may request reductions to these fee amounts, under the provisions of BMC Sections 22.20.070 or 22.20.080 relating to lower levels of impact, infeasibility, or overriding benefit to the City.
27. 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.

28. 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).

29. 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.


31. 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.

32. 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.”

33. 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.

34. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
   A. Environmental Site Assessments:
      1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
• All new commercial, industrial and mixed use developments and all large improvement projects.
• All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
• EMA is available online at:
  • http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf

2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.

3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:
1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.

3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:
1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

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

35. 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:

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, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- 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, 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 1947 Center 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. **Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

A. The project applicant shall prepare a health risk assessment that demonstrates the project’s on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

• An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.

• A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

41. **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 on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.

H. 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.

I. 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.

J. 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.

K. 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.

42. Public Works - Construction. Construction must comply with the State-wide general permit requiring owner to (1) notify the State; (2) prepare and implement a Stormwater Pollution Prevention Plan (SWPPP); and (3) monitor the effectiveness of the plan. Additional information may be found online at [http://www.swrcb.ca.gov](http://www.swrcb.ca.gov). As part of the permit submittal, the Public Works Department will need a) a copy of the “Notice of Intent” filed with the State Water Resources Control Board (SWRCB)/Division of Water Quality; b) the Waste Discharger Identification (WDID) number issued by the SWRCB for the project; c) a copy of the SWWPP prepared for each phase of the project; and d) the name of the individual who will be responsible for monitoring the site for compliance to the approved SWPPP.
43. **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:
   
   A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
   
   B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
   
   C. 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.
   
   D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
   
   E. 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.
   
   F. 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.
   
   G. 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.
   
   H. 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.

44. **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.

45. **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.

46. **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.

47. **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.

48. **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.

49. **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:

50. **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.

51. **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 August 10, 2018, except as modified by conditions of approval.

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. **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.

54. **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:

55. **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.

56. **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.

57. **Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

58. **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.
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. **Bike Parking.** Secure and on-site bike parking for at least 30 bicycles shall be provided for the life of the building.

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 BMC23E.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.

62. **Transit Subsidy Condition.** 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.

63. **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.