

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<b>Section 23E.64.030 Uses Permitted</b>		
<p>A. The following table sets forth the Permit required for each listed item. Each use or structure shall be subject to a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.</p>	<p>The list in “Section 23E.60.030 - Uses Permitted” establish objective standards governing which uses are permitted in the Zoning District. However, the requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>The Project will only contain uses on the list of “Uses Permitted” on Table 23E.64.030, primarily “Residential and Related Uses – Dwelling Units.” As defined in Zoning Ordinance table 23E64.030.A, the West Berkeley node use requirements of 23E.64.040.E, and the definitions found in Zoning Ordinance Section 23F, the non-residential components of the proposed mixed use project will only be used for retail sales, personal/household services, banks, food and alcohol service, lodging, entertainment and assembly uses, and required access to and lobbies serving upper-story uses. Consistent with Berkeley’s practice for initial project occupancy the commercial tenant space components of the ground floor uses will not be defined until building permitting. Pursuant to SB 35 none of those particular uses are subject to any additional discretionary approval, because the requirement to seek a Use Permit does not apply.</p>

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B. Pursuant to the amendment to the West Berkeley Plan concerning 2929 Seventh Street, also known as the Langendorf Building, Commercial Physical and Biological Laboratories shall be permitted on that property, with a Use Permit; provided, that the total floor area, both in this District and in the MU-LI District, on the property occupied by uses permitted in this District shall not be less than 6,000 square feet.	Not applicable to the Project. The Project is not located at 2929 Seventh Street.	Not applicable.
C. Any use not listed that is compatible with the purposes of the C-W District shall be permitted subject to securing an Administrative Use Permit. Any use that is not compatible with the purposes of the C-W District shall be prohibited.	Not applicable to the Project. The Project will only contain uses listed on Table 23E.64.030.	Not applicable.
<b>Section 23E.64.040 Special Provisions: Designated Nodes</b>		
A. In addition to the other requirements of the District, the additional purposes and requirements for designated nodes as set forth below shall apply to the locations designated in Paragraph C.	The project is located in a Designated Node. As set forth in this section of the table, the Project complies with all applicable objective standards contained in Section 23E.64.040.	The project is located in a Designated Node. As set forth in this section of the table, the Project complies with all applicable objective standards contained in Section 23E.64.040.

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<p>B. The purposes of the designated nodes are to:</p> <ol style="list-style-type: none"> <li>1. Intensify retail, commercial and mixed use activity around major intersections;</li> <li>2. Reflect and reinforce the major existing and developing concentrations of pedestrian-oriented uses;</li> <li>3. Encourage intensified development around transit transfer points;</li> <li>4. Help define the urban form of San Pablo Avenue by developing identifiable areas of concentrated development.</li> </ol>	<p>Does not apply pursuant to SB 35 – non-objective standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not Applicable. Although these provisions do not apply, the project does support the purposes of the district by providing pedestrian-oriented retail, commercial, and mixed-use activity in a retail-rich area and next to the transit.</p>
<p>C. The following locations, insofar as they are located within the C-W District, are designated as nodes subject to the requirements of Paragraphs D and E:</p> <ol style="list-style-type: none"> <li>6. 4th Street and University, including all lots in the area of the C-W District bounded by 3rd Street on the west, 5th Street on the east, the northern border of the C-W District to the north and Addison Street to the south.</li> </ol>	<p>The project is located in a Designated Node. As set forth in this section of the table, the Project complies with all applicable objective standards contained in Section 23E.64.040.</p>	<p>The project is located in a Designated Node. As set forth in this section of the table, the Project complies with all applicable objective standards contained in Section 23E.64.040.</p>
<p>D. All newly constructed main structures in designated nodes shall be at least two stories or 25 feet in height, except gasoline stations.</p>	<p>Applicable objective standard.</p>	<p>The project is at least two stories and at least 25 feet in height.</p>

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E. The ground floor of buildings in designated nodes shall only be used for retail sales, personal/household services, banks, food and alcohol service, lodging, entertainment and assembly uses, gasoline/automobile fuel stations, enclosed auto repair uses, new car dealers, enclosed used car dealers and required access to and lobbies serving upper-story uses. No food service drive-through is permitted on San Pablo.	Applicable objective standard.	The project’s ground floor would only be used for retail sales, personal/household services, banks, food and alcohol services, lodging, entertainment, and assembly uses. The project complies with this standard.
F. To issue a Use Permit for any structure or use at a designated node, the Zoning Officer or the Board must make the finding required in Section 23E.64.090.C. (Ord. 7191-NS § 20, 2011; Ord. 6675-NS § 2, 2002: Ord. 6478-NS § 4 (part), 1999)	Does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).  As set forth in Section 23E.64.090.B through H below, the applicable findings under this section of the Zoning Ordinance are not objective standards.	Not applicable.
<b>Section 23E.64.090: Findings</b> A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:	Does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).  As set forth in Section 23E.64.090.B through H below, the applicable findings under this section of the Zoning Ordinance are not objective standards.	Not applicable.

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<p>B. A proposed use or structure must:</p> <ol style="list-style-type: none"> <li>1. Be consistent with the purposes of the District;</li> <li>2. Be compatible with the surrounding uses and buildings;</li> <li>3. Be consistent with the adopted West Berkeley Plan;</li> <li>4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;</li> <li>5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property; and</li> <li>6. Be capable of meeting any applicable performance standards for off-site impacts;</li> <li>7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.</li> </ol> <p>Objective Zoning and Plan Standards</p>	<p>Does not apply pursuant to SB 35 – non-objective standards and inapplicable parking standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>The Berkeley Zoning Ordinance does not include objective performance standards for off-site impacts that are “published and adopted by ordinance or resolution” or objective standards for determining available traffic capacity or parking supply. Gov. Code § 65913.4(c).</p> <p>Finally, the City may “not impose parking standards” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Not applicable pursuant to SB 35.</p> <p>However, the proposed project is compatible with the purposes of the District, which support mixed-use residential and commercial development, and is compatible with the surrounding uses and buildings, which include commercial uses and multi-family housing. The proposed project will maintain the continuity of retail and service facilities at the ground level.</p> <p>There are no off site performance standards published or adopted by ordinance or resolution. However, the project is consistent with the findings of fact associated with other mixed use projects approved in the C-W zone in the City of Berkeley in that it will not create off-site impacts. The project’s occupancy and use will not generate noise, glare, dust, vibration, or hazardous materials, etc. because, as a mixed-use development it will not involve any manufacturing or industrial activities with the potential to generate off-site impacts typically involving regulation through performance standards.</p>

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<p>C. In order to approve a Use Permit for a use and/or structure within a node designated in Section 23E.64.040.C, the Zoning Officer or Board must find the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Zoning Officer or Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.</p>	<p>Does not apply pursuant to SB 35 – non-objective standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable pursuant to SB 35.</p> <p>However, the project includes 27,891 sq. ft. of retail commercial facing Fourth Street. The project's ground-floor design brings retail entrances to sidewalk on Fourth Street and encourages a pedestrian-oriented environment. Entrances are tightly spaced and do not create long stretches of inactivity and provide visual transparency via display windows. The project has a strong retail commercial component and is friendly to pedestrians and patrons of the project and node area.</p>

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<p>D. In order to approve a Use Permit for reduction of the otherwise applicable parking requirement on a mixed use property containing residential uses, the Board or the Zoning Officer must find that the reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.</p>	<p>Does not apply pursuant to SB 35 – non-objective standards and inapplicable parking standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>Moreover, the City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Not applicable pursuant to SB 35.</p> <p>However, the minimum parking ratio is .5 spaces per bedroom or a minimum of 170 spaces for the project’s 340 bedrooms located within 260 dwelling units. The project provides 100 commercial parking spaces, while only 56 spaces would be required by the City of Berkeley standards in the absence of SB 35. The project exceeds the minimum residential parking standards for a density bonus project by providing 190 residential parking spaces and meets City of Berkeley parking requirements for commercial parking. Additionally, since the project is within walking distance of a major transit stop (Amtrak) and several AC Transit Bus Lines, and it is not expected to cause a serious shortage of parking in the area.</p>

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<p>E. In order to approve a Use Permit to establish parking between the front property line and a main structure, the Zoning Officer or Board must find that one or more of the following circumstances exist:</p> <ol style="list-style-type: none"> <li>1. Parking in the rear or on the side of the property is impractical because of the lot’s depth and/or width;</li> <li>2. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses;</li> <li>3. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location;</li> <li>4. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front property line.</li> </ol>	<p>Not applicable to the project. The project would not establish parking between the front of the property line and a main structure.</p>	<p>Not applicable.</p>
<p>F. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.64.080.J, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.</p>	<p>Not applicable to the project. The project would not substitute bicycle and/or motorcycle parking under Section 23E.64.080.J.</p>	<p>Not applicable.</p>
<p>G. To deny a Use Permit for a major residential addition, the Zoning Officer or Board must find that although the proposed major residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.</p>	<p>Not applicable to the project. The project would not include a major residential addition.</p>	<p>Not applicable.</p>



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<p>H. Before approving a Use Permit for a Carry Out Food Store or Quick Service Restaurant on a lot with frontage on San Pablo Avenue, the Zoning Adjustments Board shall make the findings contained in Section 23B.32.040 as well as the findings that:</p> <ol style="list-style-type: none"> <li>1. The project does not conflict with the goals and policies of the C-W District; and</li> <li>2. The location, size, appearance and signage of the proposed use will not adversely affect the San Pablo Avenue Corridor; and</li> <li>3. The project supports pedestrian-oriented development; and</li> <li>4. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to: increased traffic, litter, and noise.</li> <li>5. For projects which include construction of new buildings, the board shall also make the findings that the project design:               <ol style="list-style-type: none"> <li>a. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets; and</li> <li>b. Provides pedestrian scale and siting; and</li> <li>c. Incorporates continuity in street facades. (Ord. 6675-NS § 3, 2002: Ord. 6478-NS § 4 (part), 1999)</li> </ol> </li> </ol>	<p>Not applicable to the project. The project is not located on San Pablo Avenue.</p>	<p>Not applicable.</p>
Section 23E.64.050 Construction of New Floor Area and Conversions of Existing Buildings, Requirements for Use Permits		
<p>A. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor or mezzanine levels within or onto existing buildings.</p>	<p>This provision defines terms, but does not impose a standard or requirement.</p>	<p>Not applicable.</p>

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<p>B. Construction of new floor area shall be subject to the following:</p> <ol style="list-style-type: none"> <li>1. Except as provided in Sections 2 and 3, gross floor area of 5,000 square feet or more shall not be created unless a Use Permit is obtained from the Board;</li> <li>2. Gross floor area of up to 7,500 square feet may be created with an Administrative Use Permit provided that the building is exclusively used for retail uses;</li> <li>3. Gross floor area of up to 20,000 square feet may be created with an Administrative Use Permit provided that the building contains residential space and retail space which equals not less than 15% and not more than 33% of the gross floor area being created.</li> </ol>	<p>Subsection (B)(1), the requirement to seek a Use Permit, does not apply pursuant to SB 35. Under SB 35, projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a). Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>Subsection (B)(2) is not applicable to the project as the building is not exclusively used for retail uses.</p> <p>Subsection (B)(3) is not applicable to the project as the project’s retail space is not less than 15% and not more than 33% of the gross floor area being created.</p>	<p>The Project will construct gross floor area of 5,000 square feet or more, but the requirement to seek a Use Permit does not apply.</p>

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C. Within the commercial nodes designated in Section 23E.64.040.C, an Administrative Use Permit shall be required for conversions of 5,000 square feet or more. (Ord. 6478-NS § 4 (part), 1999)	Not applicable to the project. The project would not involve the conversion of square footage.	Not applicable.
<b>Section 23E.64.060 Use Limitations</b>		
A. No commercial use shall operate except between the hours of 7:00 a.m. and 11:00 p.m. unless a Use Permit is obtained; provided, however, if the use is located within a designated node, the use may operate between 6:00 a.m. and 7:00 a.m. and/or 11:00 p.m. and 12:00 midnight with a Zoning Certificate.	Applicable objective criteria.	The project is in a designated node and will have operating hours between 6:00 a.m. and 7:00 a.m. and/or 11:00 p.m. and 12:00 midnight.
B. Any activity or use which occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor and Exterior Window Uses heading under Table 23E.64.030.	Not applicable to the project. The project would not include activity or use which occurs outside of the building.	Not applicable.
C. For purposes of the Noise Ordinance, Chapter 13.40, the C-W District shall be considered a Commercial District.	Applicable objective criteria.	It is noted that the project is located within the C-W District which is considered a Commercial District for purposes of the Noise Ordinance. The Project will comply with all applicable provisions of the Noise Ordinance and the Municipal Code.
D. Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, and Non-Chartered Financial Institutions shall be subject to the requirements of Chapters 23E.16 and 23E.20, in addition to the requirements of this District.	Not applicable to the project. The proposed project would not include Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, Amusement Arcades, Live/Work Uses, or Non-Chartered Financial Institutions.	Not applicable.

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<p>E. For changes of use on San Pablo Avenue:</p> <p>1. On lots with frontage on San Pablo Avenue, a use classified in Table 23E.64.030 as an Automobile or Other Vehicle-Oriented Use may only be established on a site which was legally used or approved for use as an Automobile or Other Vehicle Oriented Use as of March 1, 1997 (such sites are hereinafter designated as automotive sites).</p> <p>2. On an automotive site, if the automotive use is discontinued for a period of two years or more, it may not be re-established. (Ord. 7425-NS § 19, 2015; Ord. 7191-NS § 21, 2011; Ord. 6478-NS § 4 (part), 1999)</p>	<p>Not applicable to the project. The project is not located on San Pablo Avenue.</p>	<p>Not applicable.</p>
<b>Section 23E.64.070 Development Standards</b>		
<p>A. The Floor Area Ratio (FAR) shall not exceed three.</p>	<p>Applicable objective standard.</p>	<p>The proposed project would have a Floor Area Ratio of less than 3.0.</p>

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<p>B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:                      Mixed Use: 50 ft Height Max   4 Stories Max                        The 4th floor must be used for residential or live/work purposes.</p>	<p>This maximum height and story restriction is waived by operation of the State Density Bonus Law, Gov. Code § 65915, as permitted by SB 35. See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).</p> <p>The requirement that the fourth floor must be used for residential or live/work purposes is an applicable objective standard.</p>	<p>Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the height restriction because the height limit, if applied, would physically preclude the density bonus project. The proposed project would have a maximum height of <b>70’-8”</b> and <b>6</b> stories.</p> <p>The fourth floor would be used for residential purposes, complying with the standard.</p>
<p>C. No yards for main buildings, accessory buildings or accessory structures shall be required, except that:                      1. When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.</p>	<p>Not applicable to this Project. The project is not abutting or confronting a lot in a residential zone.</p>	<p>Not applicable.</p>

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D. Each lot shall contain the following minimum useable open space areas: 1. Forty square feet of usable open space for each dwelling unit; 2. Forty square feet of usable open space for each Live/Work Unit.	Applicable objective standard.	The project includes 260 dwelling units and does not include live/work units. For dwelling units, the minimum usable open space required for the project is 10,040 sq. ft. (260 unit x 40 sq. ft.). The project provides 19,079 sq.ft. of usable open space and meets the minimum open space requirements for the district and complies with objective zoning standards for open space.
E. Subject to review and consultation with the Commission and the Board, the City Manager may promulgate and revise performance standards concerning dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts. All uses shall be subject to these standards. (Ord. 6478-NS § 4 (part), 1999)	The City of Berkeley has not “published and adopted by ordinance or resolution” any applicable objective performance standards for off-site impacts pursuant to this finding. Gov. Code § 65913.4(c).	Not applicable.
<b>Section 23E.64.070 Off-Street Parking and Loading Requirements</b>		
A. All parking shall be provided in accordance with the requirements of this section and Chapter 23E.28, except as set forth in this section.	See analysis of Section 23E.64.070 below, and see Table 2 for analysis of Section 23E.28.	See analysis of Section 23E.64.070 below, and see Table 2 for analysis of Section 23E.28.

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<p>B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. Uses listed in Table 23E.64.080 shall meet the requirements listed, for newly constructed floor area or changes of use, except as otherwise modified in this subsection, and Subsections F through I below.</p>	<p>Not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Although this standard is not applicable, the Project complies. The Project will include 100 parking spaces for the 27,891 sq. ft. of commercial floor area, and only 56 parking spaces are required. Under the C-W district minimum standard parking requirement.</p>
<p>Dwelling Units: One per unit, except as modified by provisions for shared parking in Section 23E.64.080.G; 75% less for Seniors (see below)</p>	<p>Not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Although this standard is not applicable, the Project complies. The Project is subject to the State Density Bonus Law, pursuant to which the “city shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom.” Gov. Code § 65915(p)(2). As such, the minimum parking ratio is .5 spaces per bedroom, or a 170 spaces for the project’s 340 bedrooms located within 260 dwelling units. The Project complies with this standard, because it will provide 190 residential spaces.</p>

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Quick or Full Service Restaurants: One per 300 sq. ft. of floor area	<p>Not applicable to this Project and not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The proposed project does not include quick or full service restaurants and would not be subject to the parking requirement.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	Not applicable.



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Provision	Applicability	Compliance
<p>C. Unless otherwise specified in Subsections F-I, uses designated in this chapter as Other Industrial Uses; Automobile and Other Vehicle Oriented Uses; Outdoor Uses; Residential and Related Uses or as Miscellaneous Uses shall be required to provide the number of off-street parking spaces determined by the Zoning Officer or Board based of the amount of parking demand generated by the particular use and comparable with specified standards for other uses.</p>	<p>Not applicable to this Project and not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The project does not include Other Industrial Uses.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Not applicable.</p>
<p>D. The number of parking spaces provided for new commercial floor area shall not exceed four spaces per 1,000 square feet of gross floor area of the commercial use, except that up to five spaces per 1,000 square feet of gross floor area of food service uses may be provided.</p>	<p>Not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Although this provision does not apply, the Project complies. The Project includes 100 commercial parking spaces where 110 would be the otherwise minimum allowed and for the 27,891 sq. ft. of commercial floor area.</p>

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
E. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of non-residential space, in accordance with Section 23E.28.070.	The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit” – and the statute does not specify whether bicycle parking standards qualify as “parking standards.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line	Assuming this bicycle parking requirement applies, the Project complies. The Project includes 56 bicycle parking spaces for 27,891 sq. ft. of non-residential space; only 13.75 spaces are required to meet the ratio of one space per 2,000 square feet of gross floor area.
F. Any automobile parking required by this section may be leased, provided that the requirements of the general regulations concerning leased parking, Section 23E.28.030, are met and provided that the leased parking spaces are within 500 feet of the property where the parking is required; provided that leased parking a greater distance from the property may be approved by Administrative Use Permit and that if the property is located within a designated node, the leased parking spaces are located within the same designated node as the property.	Not applicable to the project.  The project would not lease any required automobile parking.	Not applicable.
G. For multiple dwellings where the occupancy will be exclusively for persons over the age of 62 years, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple family dwelling use, subject to obtaining a Use Permit.	Not applicable to the project.  Occupancy will not be exclusively for persons over the age of 62 years.	Not applicable.

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
H. Any mixed use building (residential and commercial) shall satisfy the off-street parking standards and requirements of this District, provided, however, that the Board or the Zoning Officer may issue a Permit to modify the off-street parking and usable open space requirements where it finds such modification promotes any of the general purposes set forth in 23E.64.020. The Permit required shall be an Administrative Use Permit unless a Use Permit from the Board is required to approve the use or structure, in which case a Use Permit shall be required by the Board.	As set forth in the remainder of this section, the Project complies with all off-street parking standards that are applicable after application of SB 35.	See analysis of compliance with off-street parking standards and requirements in remainder of this section.
I. If a public parking facility available for use by all members of the public is within 1,000 feet of a proposed use, the Zoning Officer or Board may approve a Use Permit to allow that use to reduce or eliminate the otherwise required parking.	Not applicable to the project.  There is no public parking facility within 1,000 feet of the project.	Not applicable.
J. Subject to the finding in Section 23E.64.090.F, an Administrative Use Permit may be issued to designate up to 10% of automobile parking required for a use for bicycle and/or motorcycle parking, unless a Use Permit from the Board is required to approve any part of the application, in which case the Use Permit shall be approved by the Board. Any bicycle parking created by this designation shall be in addition to otherwise required bicycle parking.	Not applicable to the project.  The project would not designate any of the required automobile parking for a use for bicycle and/or motorcycle parking.	Not applicable.

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
K. Notwithstanding the requirements of Section 23E.28.080 (the general regulations concerning screening and landscaping of off-street parking), there shall be no requirement for screening or landscaping of that portion of any parking lot which is adjacent to Third Street (Southern Pacific Railroad).	Not applicable to the project.  The project is adjacent to Third Street. All proposed parking would be within the structure and no parking lot would be expose or require any screening. The project complies with this note.	Not applicable.
L. No off-street automobile parking may be provided between the front property line and a main structure within a designated node. Outside of a designated node, no off-street automobile parking may be provided between the front property line and a main structure unless an Administrative Use Permit is obtained; unless a Use Permit is required to approve the use or structure, in which case the Use Permit shall be approved by the Board. In order to approve this Permit, the Zoning Officer or Board shall make the finding under Section 23E.64.090.E.	Not applicable to the project.  The project would not provide automobile parking between the front property line and a main structure within a designated node.	Not applicable.
M. No building or site shall be altered in such a way as to deprive any leasable space which is used or designated to be used by any manufacturing or wholesale trade use of all loading spaces which meet the general regulations concerning Loading Spaces (Chapter 23E.32).	Not applicable to the project.  The site does not include and will not include any manufacturing or wholesale trade use.	Not applicable.
N. Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall satisfy the loading space requirements of Chapter 23E.32. (Ord. 6856-NS § 19 (part), 2005; Ord. 6478-NS § 4 (part), 1999)	Applicable objective standard.	The proposed project includes 27,891 sq. ft. of new commercial space, requiring one loading space, which the Project will provide. See analysis of compliance with Chapter 23E.32, below.

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<p><b>23E.32.010 Off-Street Loading Spaces</b></p> <p>A. Off-street loading spaces for the uses listed in each commercial and manufacturing District’s provisions shall be provided at the quantity specified per amount of gross floor area as required in each District’s provisions and subject to the following limitations:</p> <ol style="list-style-type: none"> <li>1. Any required off-street loading space must be at least 12 feet wide and 25 feet long and have a minimum vertical clearance of 14 feet.</li> <li>2. All required off-street loading spaces must be located on the same lot as the structure or use the spaces are designed to serve.</li> <li>3. No off-street parking space required under this Ordinance may be used to satisfy the requirements for an off-street loading space.</li> <li>4. Any off-street loading space required by this Ordinance must have adequate means of access from a street or alley, and both the space and access driveway must be paved with a durable, dustless material, so as to be usable under all weather conditions.</li> <li>5. No off-street loading space may be located within 35 feet of any lot in any R District unless such space is located wholly within an enclosed building or is screened from such residential lot by a wall, hedge or fence not less than six feet in height.</li> </ol>	<p>Subsection(A)(1)-(4) are applicable objective standards.</p> <p>Subsection (A)(5) does not apply to the Project. The lot is not in an R District.</p>	<ol style="list-style-type: none"> <li>1. The project’s off-street loading space for commercial floor area is 12 feet wide and 25 feet long and has a minimum vertical clearance of 14 feet. The project meets the objective standard.</li> <li>2. The project’s off-street loading spaces are located on the ground floor and are within the parking garage on the same lot as the structure.</li> <li>3. The project would not use required off-street parking spaces to satisfy the requirements for an off-street loading space.</li> <li>4. The loading spaces are located inside the parking garage and can be used in all weather conditions. The loading spaces have a generous drive aisle and means to access Fourth Street.</li> <li>5. This standard is not applicable.</li> </ol>
<p>B. See Chapter 23E.56.080 C-T Telegraph Avenue Commercial District Provisions for district specific exception to the off-street loading spaces standards.</p>	<p>Not applicable to the project. The project is not located within the C-T Telegraph Avenue Commercial District.</p>	<p>Not applicable.</p>

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
C. For all industrial and commercial districts other than C-T, the Zoning Officer in consultation with the City Traffic Engineer may issue an Administrative Use Permit to modify the 23E.32 Off-Street Loading Spaces standards. (Ord. 7475-NS § 1, 2016; Ord. 6854-NS § 14 (part), 2005; Ord. 6478-NS § 4 (part), 1999)	Not applicable. This provision describes a process for seeking to modify requirements but does not impose any requirement itself. The Project is not seeking to modify the 23E.32 Off-Street Loading Spaces standards.	Not applicable.
<b>23E.32.020 Off-Street Loading Spaces for Commercial Districts</b> Any construction which results in the creation of 10,000 square feet of new or additional commercial gross floor space shall provide off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of commercial space and one space for each additional 40,000 square feet of gross floor area of commercial space, except to the extent that provisions in the individual Districts provide otherwise. (Ord. 7210-NS § 18, 2011; Ord. 6856-NS § 8 (part), 2005)	Applicable objective standard.	The project would create more than 10,000, but less than 40,000, square feet of new commercial gross floor space, requiring one off-street loading space. The project would provide one off-street loading space.
<b>23E.32.030 Off-Street Loading Spaces for Manufacturing and Mixed Use Districts</b> Any construction which results in the creation of 10,000 square feet of new or additional commercial or manufacturing gross floor area shall provide off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of commercial or manufacturing space and one space for each additional 25,000 square feet of gross floor area of commercial or manufacturing space thereafter. (Ord. 6856-NS § 9 (part), 2005)	Not applicable to the project. The Project is not located within a Manufacturing or Mixed-Use District.	Not applicable.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.64 C-W West Berkeley Commercial District Provisions		
Provision	Applicability	Compliance
<b>Section 23E.64.090 Findings</b>		
<p>A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See Gov. Code § 65913.4(a).</i></p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>See below.</p>

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.64 C-W West Berkeley Commercial District Provisions		
Provision	Applicability	Compliance
<p>B. Compatibility Findings to Authorize Use Permits in the C-W District – Section 23E.64.090.B.</p> <p>A proposed use or structure must:</p> <ol style="list-style-type: none"> <li>1. Be consistent with the purposes of the District;</li> <li>2. Be compatible with the surrounding uses and buildings;</li> <li>3. Be consistent with the adopted West Berkeley Plan;</li> <li>4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;</li> <li>5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property;</li> <li>6. Be capable of meeting any applicable performance standards for off-site impacts;</li> <li>7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.</li> </ol>	<p>Does not apply pursuant to SB 35 – non-objective standards and inapplicable parking standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>The City of Berkeley has not “published and adopted by ordinance or resolution” any applicable objective performance standards for off-site impacts. Gov. Code § 65913.4(c).</p> <p>Finally, the City may “not impose parking standards” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>The standards are not applicable objective standards and do not apply to the project pursuant to SB 35.</p> <p>However, the proposed project is compatible with the purposes of the District, which support mixed-use residential and commercial development, and is compatible with the surrounding uses and buildings, which include commercial uses and multi-family housing. The proposed project will maintain the continuity of retail and service facilities at the ground level.</p> <p>Additionally, because of the transit-oriented nature of the district, the rich amenities accessible in the immediate environs and the wide corridor nature of University Avenue, and the project’s provision of all required parking, the proposed project will not exceed the amount and intensity of use that can be service by available traffic capacity and potential parking supply.</p>



<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<p>C. In order to approve a Use Permit for a use and/or structure within a node designated in Section 23E.64.040.C, the Zoning Officer or Board must find the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Zoning Officer or Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.</p>	<p>Does not apply pursuant to SB 35 – non-objective standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable pursuant to SB 35.</p> <p>However, the proposed project at 1900 Fourth is located within a designated node of the West Berkeley Plan. The project will develop pedestrian-oriented commercial spaces, continuing the walkable retail/restaurant experience of Fourth Street. The placement of store entrances and sizable display windows primarily face Fourth Street, creating pedestrian attraction and accessibility. A few commercial spaces do not face Fourth Street, but rather face into an open-air pedestrian paseo, which will expand the walkable retail character of the project. Parking is all provided internal to the project – convenient for motorists while preserving the focus on walkability and safe accessibility for pedestrians. The project will add on-street parallel parking along the Fourth Street frontage, which will continue the slowed-street effect experienced on Fourth Street north of Hearst Avenue.</p>

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.64 C-W West Berkeley Commercial District Provisions		
Provision	Applicability	Compliance
<p>D. In order to approve a Use Permit for reduction of the otherwise applicable parking requirement on a mixed use property containing residential uses, the Board or the Zoning Officer must find that the reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.</p>	<p>Does not apply pursuant to SB 35 – non-objective standards and inapplicable parking standards.</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>Moreover, the City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Not applicable pursuant to SB 35.</p> <p>However, the minimum parking ratio is .5 spaces per bedroom or a minimum of 170 spaces for the project’s 340 bedrooms located within 260 dwelling units. The project provides 100 commercial parking spaces, while only 56 spaces would be required by the City of Berkeley standards in the absence of SB 35. The project exceeds the minimum residential parking standards for a density bonus project by providing 190 residential parking spaces and meets City of Berkeley parking requirements for commercial parking. Additionally, since the project is within walking distance of a major transit stop (Amtrak) and several AC Transit Bus Lines, and it is not expected to cause a serious shortage of parking in the area.</p>

<b>Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Chapter 23E.64 C-W West Berkeley Commercial District Provisions</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<p>E. In order to approve a Use Permit to establish parking between the front property line and a main structure, the Zoning Officer or Board must find that one or more of the following circumstances exist:</p> <ol style="list-style-type: none"> <li>1. Parking in the rear or on the side of the property is impractical because of the lot’s depth and/or width;</li> <li>2. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses;</li> <li>3. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location;</li> <li>4. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front property line.</li> </ol>	Not applicable to the project.	The proposed project is not establishing parking between the front property line and a main structure.
<p>F. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.64.080.J, the Zoning Officer or Board must find that the substitution will not lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.</p>	Not applicable to the project.	The project is not substitution parking for bicycle and/or motorcycle parking under section 32E.64.080.J.
<p>G. To deny a Use Permit for a major residential addition, the Zoning Officer or Board must find that although the proposed major residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.</p>	Not applicable to the project.	The project does not include a major residential addition.

Table 1: BMC Sub-Title 23E Provisions Applicable in All Non-Residential Districts		
Chapter 23E.64 C-W West Berkeley Commercial District Provisions		
Provision	Applicability	Compliance
<p>H. Before approving a Use Permit for a Carry Out Food Store or Quick Service Restaurant on a lot with frontage on San Pablo Avenue, the Zoning Adjustments Board shall make the findings contained in Section 23B.32.040 as well as the findings that:</p> <ol style="list-style-type: none"> <li>1. The project does not conflict with the goals and policies of the C-W District; and</li> <li>2. The location, size, appearance and signage of the proposed use will not adversely affect the San Pablo Avenue Corridor; and</li> <li>3. The project supports pedestrian-oriented development; and</li> <li>4. The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to: increased traffic, litter, and noise.</li> </ol> <p>5. For projects which include construction of new buildings, the board shall also make the findings that the project design:</p> <ol style="list-style-type: none"> <li>a. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets; and</li> <li>b. Provides pedestrian scale and siting; and</li> <li>c. Incorporates continuity in street facades. (Ord. 6675-NS § 3, 2002; Ord. 6478-NS § 4 (part), 1999)</li> </ol>	<p>Not applicable to the project.</p>	<p>The project is not located on a lot with frontage on San Pablo Avenue.</p>

Table 2 includes zoning standards applicable zoning standards for all districts.

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<b>Chapter 23B.32.040 Use Permits</b>		
<b>Section 23C.08.040 Findings for Issuance and Denial and Conditions</b>		

<p>A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards listed in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Although this standard does not apply, the proposed project will neither be a detriment to the neighborhood nor to the City of Berkeley in general. The proposed project represents a significant improvement on a severely underutilized lot by providing mixed use development, with highly amenitized residential units and pedestrian-oriented commercial space. The project, therefore, aligns with Berkeley’s General Plan, West Berkeley Plan, University Avenue Strategic Plan and Climate Action Plan goals which seek to increase housing opportunities, particularly in locations such as this, located along major transportation corridors and proximate to commercial amenities. The new retail spaces and restaurant use will expand the success of the Fourth Street shopping district, and bridge this area with the emerging portion of Fourth Street south of University.</p>
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<p>B. Prior to approving any Use Permit the Board must also make any other findings required by either the general or District regulations applicable to that particular Use Permit.</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>The findings required by the applicable District regulation are addressed above in the Table relevant to Section 23E.64.090 of the Zoning Ordinance.</p>	<p>Not applicable.</p>
<p>C. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>

<p>D. The Board may attach such conditions to any Use Permit as it deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards listed in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>
<p><b>Chapter 23C.08 Demolition and Dwelling Unit Controls</b></p>		
<p><b>Section 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses</b></p>		



<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.</p>	<p>The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards for issuance of a use permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>
<p>B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.</p>	<p>Not applicable to the project. The project site does not include an accessory building.</p>	<p>Not applicable.</p>

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>C. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.</p>	<p>This provision describes procedural requirements, but does not impose any standards. The requirement to seek a discretionary use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).</p>	<p>A small existing building will be demolished as part of the project. As determined by the LPC, the building is not eligible to receive a City of Berkeley Landmark designation, because the building is not of particular architectural character or historic interest, and cannot be retrofitted to be included in the new project. The structure is not on a national, state, or local historic register.</p>

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:</p> <ol style="list-style-type: none"> <li>1. Is required to allow a proposed new building or other proposed new Use;</li> <li>2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;</li> <li>3. Will remove a structure which represents an unabatable attractive nuisance to the public; or</li> <li>4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (Ord. 6478-NS § 4 (part), 1999)</li> </ol>	<p>Does not apply pursuant to SB 35 – non-objective standards.</p> <p>The requirement to seek a discretionary use permit for demolition does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). These standards in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>A small, neglected, non-residential building currently sits at the southwest corner of the site. Although the requirements in this provision do not apply pursuant to SB 35, the demolition of the structure would meet the standards in this provision if they applied. The building's size and poor structural condition is not an asset to the commercial needs and public interest. The building's demolition would not be materially detrimental to the commercial needs of public interest of any affected neighborhood and the structure is required to allow the proposed use. Although this provision does not apply pursuant to SB 35, the Project complies with these standards.</p>
<b>Chapter 23E.04 Lot and Development Standards</b>		
<b>Section 23E.04.020 Heights</b>		
<p>A. In any commercial, mixed use or manufacturing District, the height limits for Schools, buildings for Religious Assembly Use, hospitals and other public buildings permitted in such District shall not exceed the height limit permitted for that District.</p>	<p>Not applicable to the project. The project is not proposing a school, building for Religious Assembly Use, hospital, or other public building.</p>	<p>Not applicable.</p>

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>B. Towers, antennas and poles used for the transmission of electricity, telephone, telegraph, cable television, or other messages; except for electromagnetic signals for cellular radiotelephone service and wireless telecommunications; and flag poles, chimneys, water tanks, heating and air conditioning equipment, skylights, solar energy equipment, vents, pipes and similar structures and necessary mechanical appurtenances may be built and used to a greater height than the limit established for the District in which the building is located. Wireless telecommunication antennas, other than those located within the public right-of-way, shall be subject to the height restrictions in Section 23C.17.060 and shall require a Use Permit or Administrative Use Permit.</p>	<p>Applicable objective standard.</p>	<p>The project would include necessary mechanical equipment on the roof at a height greater than the height limit in the C-W District. The project would not include wireless telecommunications antennas within the public right-of-way. The project complies with this section.</p>
<p>C. Any projection not listed in the foregoing paragraph is prohibited except upon issuance of an AUP, including, but not limited to, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements which exceed a District's height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all of the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building. (Ord. 6671-NS § 5 2001: Ord. 6478-NS § 4 (part), 1999)</p>	<p>Applicable objective standard.</p>	<p>The building's roof includes mechanical penthouse and elevator equipment rooms that exceed the C-W Districts height limit. The average floor area of all the buildings floors is <b>52,958</b> sq. ft. not include the garage. The roof-top equipment rooms cover 3,000 and 3,100 sq. ft. of roof are or <b>11.5%</b> of the average floor area of the proposed project. The project complies with the standard.</p>
<b>Chapter 23E.08 Design Review</b>		
<b>Section 23E.08.020 Applicability</b>		

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>A. The design review process and the design guidelines apply to the following:</p> <ol style="list-style-type: none"> <li>1. Development within all commercial, manufacturing, mixed use and all other non-residential Districts;</li> <li>2. All commercial and mixed use projects in the R-4 District;</li> <li>3. All commercial, mixed use and community and institutional projects in the R-SMU and R-S Districts; and</li> <li>4. All mixed use and community and institutional projects in the R-3 District within the boundaries of the Southside Plan (see Section 23D.36.050 for area description).</li> </ol>	<p>This provision describes the types of development that are subject to design review, but does not impose any standards. Pursuant to SB 35, the only applicable “design review standards” are those that “involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5).</p>	<p>Since the Project is located in a commercial district, it is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards.</p>
<p>B. All projects for which a building or sign permit is required, involving exterior construction or alteration, the removal of public facades or any portion of those facades, or the erection or replacement of signs, are subject to design review.</p>	<p>Not applicable to the project. The project would not require a sign permit.</p>	<p>Not applicable.</p>
<p>C. Permits for projects that are subject to design review may not be issued without design review approval, except that they may be issued conditional upon such approval occurring before the issuance of a building permit or for a permit for a sign as set forth in BMC 20.12.010 (the Sign Ordinance).</p>	<p>This provision describes a procedural requirement, but does not impose any standards. Pursuant to SB 35, the only applicable “design review standards” are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5).</p>	<p>The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards.</p>

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>D. No Zoning Certificate may be approved before approval of design review for such a pending Zoning Certificate application.</p>	<p>This provision describes a procedural requirement, but does not impose any standards. Pursuant to SB 35, the only applicable design review standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5).</p>	<p>The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards.</p>
<p>E. No building or sign permit may be issued, except in conformance with this Chapter. (Ord. 7210-NS § 16, 2011: Ord. 6478-NS § 4 (part), 1999)</p>	<p>This provision describes a procedural requirement, but does not impose any standards. Pursuant to SB 35, the only applicable design review standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5).</p>	<p>The Project is subject to the design review process and the design guidelines in the Zoning Ordinance, to the extent those guidelines impose objective standards.</p>
<b>Chapter 23E.08 Design Review Process</b>		
<b>Section 23E.12.020 Responsibility for Design Review</b>		

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>A. The Landmarks Preservation Commission (LPC) has the responsibility for design review of projects which involve landmarks, structures of merit or buildings within a historic district, pursuant to Chapter 3.24.</p>	<p>The provision describes the entity responsible for design review, but does not impose a standard. Pursuant to SB 35, the only applicable design review standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4(a)(5). Under the code, the LPC exercises its design review by assessing whether projects meet the criteria for issuance of a Structural Alteration Permit. As discussed in Table 3, below, the criteria for issuance of a Structural Alteration Permit are not objective standards and therefore are inapplicable pursuant to SB 35.</p>	<p>The project involves a City of Berkeley Landmark, and therefore the Landmarks Preservation Commission is responsible for design review.</p>
<p>B. The Design Review Committee or design review staff has responsibility for design review of other projects which involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24. Such applications shall be referred to the LPC for comment, prior to the approval of the application.</p>	<p>Not applicable to the Project. Pursuant to 23E.12.0209(A), above, the LPC, rather than the Design Review Committee or design review staff, is responsible for design review.</p>	<p>Not applicable.</p>

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts		
<p>C. The Design Review Committee or design review staff has responsibility for design review of projects other than those noted in the two preceding paragraphs, which involve a building or a structure over forty (40) years old. In cases where a building or structure may have special architectural or historical significance, as determined by the secretary to the LPC, the project shall be referred to either the LPC or Staff by the design review staff for advisory comments prior to review by the Design Review Committee or design review staff.</p>	<p>Not applicable to the Project. Pursuant to 23E.12.020(A), above, the LPC, rather than the Design Review Committee or design review staff, is responsible for design review.</p>	<p>Not applicable.</p>
<p>D. The Design Review Committee or design review staff has responsibility for design review of all projects subject to design review which are not described in the preceding paragraphs. When the secretary of the LPC determines that a building that is forty (40) years old or less may have special architectural and/or historical significance, the Design Review Committee or design review staff may refer the application to the LPC or its staff for comment.</p>	<p>Not applicable to the Project. Pursuant to 23E.12.020(A), above, the LPC, rather than the Design Review Committee or design review staff, is responsible for design review.</p>	<p>Not applicable.</p>
<p>E. The Design Review Committee or design review staff has responsibility for design review of signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC’s current List of Structures and Sites, and may refer such projects to the LPC or its staff for comments. (Ord. 6478-NS § 4 (part), 1999)</p>	<p>Not applicable to the Project. The existing structure is not listed on the State Historic Resources Inventory list, or the LPC’s current List of Structures and Sites.</p>	<p>Not applicable.</p>
<b>Chapter 23E.28 Off-Street Parking and Transportation Services Fee</b>		
<b>Section 23E.28.040 Traffic Engineering Requirements</b>		



Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts		
<p>A. In addition to the requirements of this Ordinance, all off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City’s Traffic Engineering requirements.</p>	<p>To the extent the City’s Traffic Engineering requirements include objective standards that are “published and adopted by ordinance or resolution,” this is an applicable objective standard. Gov. Code § 65913.4(c). To the extent the City’s Traffic Engineering requirements include any requirements that involve “personal or subjective judgment by a public official,” or which are not “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal,” the provision is inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5)</p>	<p>All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way were designed to conform to the City’s Traffic Engineering requirements. See plan set attached to this submittal.</p>
<p>B. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible and safe parking areas, and are adequately integrated with the City’s overall street pattern and traffic flows.</p>	<p>To the extent the Traffic Engineer’s determinations are based on conformance with objective standards contained in regulations that are “published and adopted by ordinance or resolution,” this is an applicable objective standard. Gov. Code § 65913.4(c). To the extent this requirement could be used to impose greater requirements than those imposed in officially published and adopted objective standards, the provision is inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5)</p>	<p>All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way were designed to conform to the City’s Traffic Engineering requirements. See plan set attached to this submittal.</p>

<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>C. Dimensional requirements and standards for off-street parking spaces, driveway and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and the Zoning Adjustments Board.</p>	<p>To the extent the regulations objective and are “published and adopted by ordinance or resolution,” this is an applicable objective standard. Gov. Code § 65913.4(c). To the extent the regulations include any requirements that involve “personal or subjective judgment by a public official,” or which are not “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal,” the provision is inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5).</p>	<p>All dimensions and standards for off-street parking spaces, driveway and other access improvements, and maneuvering aisles follow The City of Berkeley Traffic Engineer’s Parking and Driveway Design Guidelines. See site plan and parking, ingress and egress in the attached plan set.</p>

Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts		
<p>D. 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.</p>	<p>Not applicable pursuant to SB 35 – inapplicable parking standard.</p> <p>The City may “not impose parking standards” if “[t]he development is located within one-half mile of public transit.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Although this standard is not applicable, the Project complies.</p> <p>The Project is subject to the State Density Bonus Law, pursuant to which the “city shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom.” Gov. Code § 65915(p)(2). As such, the project’s minimum parking ratio is .5 spaces per bedroom, or a minimum of 170 spaces for the project’s 340 bedrooms located within 260 dwelling units. The project complies with this standard because it will provide 190 residential parking spaces.</p> <p>The proposed project includes 100 commercial parking spaces, while only 56 would be required under the code for the 27,891 sq. ft. of commercial floor area. This includes 4 Accessible Stalls for Retail and 4 Accessible Stalls where 4 are required or per 2016 CBC Section 1109A.3.</p>
<p><b>Section 23E.28.070 Bicycle Parking</b></p>		

**Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts**

<p>A. Bicycle parking spaces required by each District’s bicycle parking requirements shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer. Bicycle parking shall be located in accordance to the design review guidelines.</p>	<p>Arguably inapplicable pursuant to SB 35 – non-applicable parking standard.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit” – and the statute does not specify whether bicycle parking standards qualify as “parking standards.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p> <p>Moreover, design review guidelines for bicycle parking are only applicable to the extent those guidelines are (1) “published and adopted by ordinance or resolution” and (2) “involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5), (c). The requirement to seek location approval by the City Traffic Engineer or Zoning Officer is applicable only to the extent the Engineer or Zoning Officer will grant or deny approval based on the Project’s compliance with published, objective criteria.</p>	<p>Assuming this standard applies, the Project complies.</p> <p>Bicycle parking will be located either in a locker or in a rack suitable for secure locks. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way were designed to conform to the City’s Traffic Engineering requirements.</p>
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<b>Table 2: Other Applicable Zoning Standards from BMC Sub-Title 23C General Provisions Applicable in All Districts and 23E Provisions Applicable in All Non-Residential Districts</b>		
<p>B. Except in C-E and C-T Districts, Bicycle Parking shall be provided for new floor area or for expansions of existing industrial, commercial, and other non-residential buildings at a ratio of one space per 2,000 square feet of gross floor area.</p>	<p>Inapplicable pursuant to SB 35 – non-applicable parking standard.</p> <p>The City may “not impose parking standards for a streamlined development” if “[t]he development is located within one-half mile of public transit” – and the statute does not specify whether bicycle parking standards qualify as “parking standards.” Gov. Code §65913.4(d). The Project is within a half mile of the Amtrak train station and the AC Transit 51B bus line.</p>	<p>Assuming this bicycle parking requirement applies, the Project complies. The Project includes 56 bicycle parking spaces for 27,891 sq. ft. of non-residential space; only 13.75 spaces are required to meet the ratio of one space per 2,000 square feet of gross floor area.</p>
<p>C. The Zoning Officer in consultation with the City Traffic Engineer may modify the requirement with an Administrative Use Permit for Tourist Hotels in the C-DMU District. (Ord. 7475-NS § 3, 2016; Ord. 6478-NS § 4 (part), 1999)</p>	<p>Not applicable to the project. The project is not located in the C-DMU District.</p>	<p>Not applicable.</p>

Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements		
Provision	Applicability	Compliance
<b>Section 22.20.065 Affordable housing mitigation fee</b>		
<p>C. The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.</p> <ol style="list-style-type: none"> <li>1. All Fees shall be paid, at the issuance of a Certificate of Occupancy, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.</li> <li>2. No later than the date the first building permit is issued for a Development project that is subject to the Fee, the applicant may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance</li> </ol>	<p>Applicable objective standards</p>	<p>The proposed project is subject to three different affordable unit criteria. SB 35 requires 50% of units to be dedicated affordable units, see Gov. Code § 65913.4(a)(4)(B)(ii), and the project's compliance with that criterion insures that it meets the requirements of both the City of Berkeley Affordable Housing Mitigation Fee and State Density Bonus Law thresholds, both of which require 20% of units to be affordable. See Gov. Code § 65915(d)(2)(B); BMC § 22.20.065.C.2. By providing 50% of its units for low-income households, the Project is exempt from the City's affordable housing mitigation fee, per BMC § 22.20.065.D.</p> <p>Additionally, the project is entitled to a concession, pursuant to State Density Bonus Law, GC Sec. 65915(d)(1), to allow the Inclusionary Units to be separated into a separate building on the podium deck for</p>

**Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements**

<p>with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.</p> <p>3. In making its election under the preceding paragraph, an applicant for a Development project subject to this Section may provide less than 20% of the total units in the project as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.</p> <p>4. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.</p> <p>5. Units that meet the criteria established for affordable housing rents in the City’s Housing Trust Fund guidelines, as amended shall be exempt from the Fee.</p> <p>D. Projects that include Low-income and Very Low-Income Units, including Qualifying Units, will qualify to pay a discounted fee if providing fewer than the number of units equal to 20% of the total units in the project.</p> <p>The following equation calculates the proportional discount to the fee based on the portion of units in the project that are provided at Low-Income and Very Low Income rents. The total fee payable for such projects shall be:</p> $[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$ <p>Where:  A = Total number of units in the project</p>		<p>financing purposes and be of different design to non-inclusionary units in terms of size, appearance, materials and finish quality.</p>
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Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements		
<p>B = Number of Very-Low Income Units provided in the project.                      C = Number of Low-Income Units provided in the project.</p>		
Section 23C.12.020 Applicability of Regulations		
<p>A. The following types of projects must comply with the inclusionary housing requirements of this chapter:</p> <ol style="list-style-type: none"> <li>1. Residential housing projects for the construction of five or more Dwelling Units;</li> <li>2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;</li> <li>3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.</li> </ol> <p>B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.</p> <p>C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.</p>	<p>Applicable objective standards</p>	<p>The project represents a residential housing project, proposing more than five units.</p>
Section 23C.12.030 General Inclusionary Requirement: 20% of Units		
<p>A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least 51% of their units as Inclusionary Units.</p> <p>B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be paid as an in-lieu fee.</p>	<p>Applicable objective standards</p>	<p>By providing 50% of its units for low-income households, based income levels in the Oakland PMSA, the project complies with this requirement.</p>



<b>Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements</b>		
<p>C. For the purpose of determining the median income levels for Households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census.</p>		
<b>Section 23C.12.040 Requirements Applicable to all Inclusionary Units</b>		
<p>A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross incomes do not exceed 120% of the Oakland PMSA median.</p> <p>B. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all Dwelling Units and other information as required for determining compliance with this chapter.</p> <p>C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of non-inclusionary units.</p> <p>D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.</p> <p>E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee to the City.</p> <p style="margin-left: 20px;">1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects, where Government Code Section 65915 does not apply, and the difference between affordable cost for an</p>	<p>Applicable objective standards</p>	<p>The project will provide the designated below-market rate units to Low Income Households.</p> <p>The project requests a concession, pursuant to State Density Bonus Law, GC Sec. 65915(d)(1), to allow the Inclusionary Units to be separated into a separate building on the podium deck for financing purposes and be of different design to non-inclusionary units in terms of appearance, materials and finish quality.</p>

Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements		
<p>appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects where Government Code Section 65915 does apply to require a Density Bonus or equivalent incentive.;</p> <p>2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation), to provide, construct or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.</p> <p>F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the Board may approve one or more of the following measures to reduce costs or increase profitability:</p> <ol style="list-style-type: none"> <li>1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such units conform to applicable building and housing codes;</li> <li>2. An increase in the number of bedrooms in the Inclusionary Units;</li> <li>3. In a home ownership project, construction of rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects;</li> <li>4. Waiving of the in-lieu participation fees for fractions of units.</li> </ol>		
Section 23C.12.050 State of California Density Bonus Requirements		
<p>A. The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential density permitted by this Ordinance and the General Plan in effect when the application for the development was determined to be complete, and at least one</p>	<p>Applicable objective standards</p>	<p>The proposed project is subject to three different affordable unit criteria. SB 35 requires 50% of units to be dedicated affordable</p>

**Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements**

<p>of the concessions or incentives set forth in Government Code Section 65915(h); unless the decision maker makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Government Code Section 65915(c); or the City shall provide other incentives of equivalent financial value based on the land cost per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three alternatives to comply with Density Bonus requirements:</p> <ol style="list-style-type: none"> <li>1. Twenty percent of the total units of a housing development for lower income Households, as defined in Health and Safety Code Section 50079.5; or</li> <li>2. Ten percent of the total units of a housing development for very low income Households, as defined in Health and Safety Code Section 50105; or</li> <li>3. Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined in Civil Code Section 51.3.</li> </ol> <p>B. For purposes of this chapter, the Density Bonus shall not be included when determining the number of housing units which is equal to 10% or 20% of the total. The Density Bonus shall apply to housing developments consisting of five or more Dwelling Units.</p> <p>C. The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise applicable Permit conditions and provision of government benefits.</p> <p>D. If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost certification process.</p>		<p>units, and the project’s compliance with that criterion insures that it meets the requirements State Density Bonus Law Thresholds, which require 20% of units to be affordable to lower income households.</p>
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**Section 23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects**

**Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements**

<p>A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.</p> <p>B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an appropriate-sized Household whose income is 81% of the Oakland PMSA median.</p> <p>C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price that is affordable to Low or Lower Income Households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices shall be affordable to Households at 81% income of the Oakland PMSA median.</p> <p>D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall be affordable to a Household with income that is 60% of the Oakland PMSA median.</p> <p>E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household’s Gross Income.</p> <ol style="list-style-type: none"> <li>1. Gross Household Income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;</li> <li>2. For purposes of calculating rent, appropriate Household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.</li> </ol> <p>F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this section for the life of the building.</p> <p>G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of the appropriate Household</p>	<p>Applicable objective standards</p>	<p>The proposed project is subject to three different affordable unit criteria. SB 35 requires 50% of units to be dedicated affordable units, and the project’s compliance with that criterion insures that it meets the requirements City’s inclusionary unit thresholds.</p>
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**Table 3: Chapter 22.20 Mitigation and Fees – Conditions for Approval of Development Projects/ Chapter 23C.12 Inclusionary Housing Requirements**

<p>size for the unit. For purposes of occupancy, the appropriate Household size standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the eligible Households referred by the City.</p> <p>H. The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability</p>		
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Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
<b>Section 3.24.200 Landmarks, historic districts and structures of merit--Construction, alteration or modification--Approval required.</b>		
<p>No person shall carry out or cause to be carried out on a designated landmark, in a designated historic district or structure of merit, any construction, alteration, or demolition for which a City permit is required, without approval by the commission pursuant to Sections 3.24.220 through 3.24.250 hereof, except in conformity with the provisions of Section 3.24.280 hereof. In addition, no such work shall take place unless all other applicable laws and regulations have been complied with, and a permit has been issued for said work. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 5, 1974)</p>	<p>The requirement to seek a discretionary permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below, the standards for issuance of a LPC permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>
<b>Section 3.24.210 Review of permit applications.</b>		
<p>A. The commission shall maintain with the Department of Planning and Community Development and the department’s zoning and codes and inspection division a current record of designated landmarks, historic districts and structures of merit, as well as a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, alteration or demolition on a landmark site, in</p>	<p>This provision imposes procedural requirements upon City agencies, but it does not impose any standards on development.</p>	<p>Not applicable.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
<p>an historic district or on a structure of merit site, or on an initiated landmark site, in an initiated historic district or on an initiated structure of merit site, the Department of Planning and Community Development shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 3.24.280 of this chapter, promptly forward such permit application to the commission for review.</p>		
<p>B. The City Council shall set by resolution the fees for Landmarks Preservation Commission review of any application for a permit to carry out any construction, alteration or demolition on an initiated or designated nonresidential landmark site (or nonresidential portion thereof), in an initiated or designated historic nonresidential district (or nonresidential portion thereof), or on an initiated or designated nonresidential structure of merit (or nonresidential portion thereof.)                      Landmarks Preservation Commission review of applications for permits to carry out any construction, alteration, or demolition on residential initiated or designated landmarks, residential initiated or designated historic districts and residential initiated or designated residential structures of merit, located in any zoning district and nonresidential initiated or designated landmarks, nonresidential initiated</p>	<p>The provision establishes the type of projects that must pay fees for LPC review, but does not impose a development standard.</p>	<p>The Project will pay all applicable fees.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
<p>or designated historic districts and nonresidential initiated or designated structures of merit located in residential zoning districts, are not subject to the landmarks review fees.</p> <p>Applicants who are qualified non-profits and other applicants with projects valued at less than three hundred fifty thousand dollars may apply to the City Manager for a fee waiver if it can be demonstrated that the payment of the fee would pose a hardship. (Ord. 6403-NS § 3, 1998: Ord. 5949-NS § 1, 1989: Ord. 5686-NS § 1, (part), 1985: Ord. 4914-NS § 1 (part), 1976: Ord. 4694-NS § 6, 1974) (Ord. 6403-NS repealed pursuant to modifications made by the California Court of Appeal on 1/7/98)</p>		
Section 3.24.220 Permit application--Data and public hearing required--Exceptions.		
<p>A. The commission shall review the permit application in accordance with the provisions of this section and Sections 3.24.230 through 3.24.250 except:</p> <p>1. When the application is for a permit to do ordinary maintenance and repairs, unless, in the opinion of the commission, approval of the said application would seriously conflict with the purposes and standards of this chapter or the provisions of the designation. For the purpose of this chapter, "ordinary maintenance and repairs" means any work, the sole purpose</p>	<p>The requirement to obtain a discretionary LPC permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>The provisions for ordinary maintenance and repairs are not applicable to this project. The Project involves new construction, not maintenance and repairs.</p>	<p>Not applicable.</p>



<b>Table 4: BMC Title 3 Boards, Commissions and Committees</b>		
<b>Chapter 3.24 Landmarks Preservation Commission</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
and effect of which is to correct deterioration, decay or damage.		
B. Any such permit application referred to the commission shall include plans and specifications showing the proposed appearance, color and texture of materials, and the proposed architectural design of the structure. If the application, together with its supporting plans and specifications does not provide a sufficient basis for review by the commission, the commission shall inform the applicant of the additional data required, and the applicant shall supply said data.	The requirement to obtain a discretionary LPC permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. <i>See Gov. Code § 65913.4(a).</i>	Although the requirement to obtain a discretionary LPC permit does not apply, the Project complies with this provision. The accompanying application includes plans and specifications showing the proposed appearance, color and texture of materials, and the proposed architectural design of the structure.
C. Except for permits issued pursuant to subsection A.1, of this section, the commission shall hold a public hearing on the permit application. Such public hearing shall be held within seventy days after receipt by the commission of the application. (Ord. 5686-NS § 1 (part), 1985; Ord. 5163-NS § 1 (part), 1979; Ord. 4694-NS § 6.1(a), 1974)	The provision imposes procedural requirements on City agencies, but does not impose a development standard.  The requirement to obtain a discretionary LPC permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. <i>See Gov. Code § 65913.4(a).</i>	Not applicable.
<b>Section 3.24.260 Permit application--Review standards and criteria.</b>		
A. The commission shall be guided by the standards in this section in its review of permit applications for work on a landmark site, in an historic district or on a structure of merit site.	The requirement to seek a discretionary permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary	Not applicable.

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
<p>In appraising the effects and relationships mentioned herein, the commission shall in all cases consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant.</p>	<p>permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	
<p>B. In all instances, the proposed work shall be as appropriate for and as consistent with the purposes of this chapter as is possible within the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation.</p>	<p>The requirement to seek a discretionary permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. <i>See</i> Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards in this provision involve personal or subjective judgment and are not uniformly</p>	<p>Not applicable.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
	verifiable to any uniform benchmark or criterion.	
<p>C. Approval of permit applications pursuant to this section may be granted only upon determination that the proposal conforms to the criteria set forth in paragraphs 1. and 2. below:</p> <p>1. For permit applications for construction, alteration or repair:</p> <p>a. For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.</p> <p>b. For applications relating to property in historic districts, the proposed work shall not adversely affect the exterior architectural features of the subject property or the relationship and congruity between the subject structure or feature and its neighboring structures and surroundings, including facade, setback and height; nor shall the proposed work adversely affect the special character or</p>	<p>Not applicable pursuant to SB 35 – non-objective standard.</p> <p>The requirement to seek a discretionary permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary permit. See Gov. Code § 65913.4(a).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p> <p>Moreover, the standards in this provision are also inapplicable to the Project site, because no Shellmound is located on the Project site. Therefore, the proposed work would not adversely affect the major features or value of</p>	<p>Although the standards in this provision do not apply to, the Project nevertheless complies with the standards. Since no shellmound is located on the Project site, the Project has no potential to adversely affect the features of the landmark, which are related to the assumed location of the Shellmound.</p> <p>The project site is part of a group of several properties that were designated by the City of Berkeley’s Landmarks Preservation Commission as a Landmark site. This status was conferred in an effort to preserve an area assumed to be near or a part of the site of the Ohlone West Berkeley Shellmound, defined primarily by what prior researchers and investigators estimated as the location and dimensions of the Shellmound. The above ground portions of the Shellmound were destroyed in the late 1800’s and early 1900’s during Berkeley’s initial development and industrialization. As such, the actual location of the Shellmound was not known at the time of the landmark designation.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
<p>special historical, architectural or aesthetic interest or value of the district. The proposed work shall also conform to such further standards as may be embodied in the designation of the historic district.c. For applications relating to structure of merit sites, the proposed work shall not adversely affect the architectural features if architectural merit is the basis for designation; nor shall the proposed work adversely affect the special cultural, educational or historical interest or value if that is the basis for designation.</p> <p>2. For permit applications for demolition: the commission shall find that the designated landmark, historic district or structure of merit or portion thereof is in such condition that it is not feasible to preserve or restore it, taking into consideration the economic feasibility of alternatives to the proposal, and balancing the interest of the public in preserving the designated landmark, historic district or structure of merit or portion thereof and the interest of the owner of the landmark site, historic district, or structure of merit site in its utilization. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 6.2, 1974)</p>	<p>the landmark, which are related to the assumed location of the Shellmound.</p>	<p>Property owners west of Second Street successfully litigated to remove the landmark designation from their properties, and the City’s position during that litigation was that without subsurface investigation, the landmark boundaries “will always be approximate,” and that the designation “does not in itself prevent any developer or use of the property effected. Rather, it requires additional review of new buildings or alterations to the exterior of existing buildings, with an eye towards protecting the resource. That is, it will require that appropriate further investigation be done – and ‘certainty’ achieved - before further development occurs.” Memorandum of Points and Authorities in Opposition to Motion for Writ of Mandate, at 2, <i>620 Hearst Group v. City of Berkeley</i>, Case No. 834470-2 (Alameda Sup. Ct. Aug. 20, 2001). That “further investigation” has now occurred, and it confirms that no shellmound is located on the Project site.</p> <p>In response to the requirement of the Landmark Ordinance to thoroughly investigate the site prior to any development, an archeological</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
		<p>investigation was conducted by Archeo-Tec in 1999 and 2000 which included 43 borings across the entire site. This study identified potential secondary shell deposits (meaning that they were moved from wherever their original deposition location was) in two areas of the site.</p> <p>In order to further explore the two areas identified in 1999/2000, further study in early 2014 was conducted by Dr. Allen Pastron of Archeo-Tec under the cultural oversight of Mr. Andy Galvan, an Ohlone Indian and cultural resource management expert. This study mechanically excavated twenty (and hundreds of feet of) test trenches placed strategically so as to extensively sample the areas indicated by the 1999 and 2000 studies to hold the highest potential to contain Shellmound remnants. <b>Investigators found no intact shellmound, and no cultural artifacts or materials of prehistoric origin were discovered. No evidence whatsoever was found that the West Berkeley Shellmound was ever located on the site.</b> Therefore, the proposed work would not adversely affect the major features or value of the landmark, which are related to the assumed location of the shellmound.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
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Provision	Applicability	Compliance
		<p>The site was also studied by Geosphere Consultants, Inc. who prepared a Geological Engineering Report for the project site after performing onsite field exploration program consisting of performing a combination of drilled test borings, as well as an extensive review consisting of pertinent geologic and geotechnical literature pertaining to the site area, and previous geotechnical studies performed by others for projects in the site vicinity were reviewed. These included United States Geological Survey (USGS) from 1856-1895, California Geological Survey (CGS), and other online resources, and other applicable government and private publications and maps.</p> <p>The conclusions of the Geological Engineering Report indicated that the site is located at the historical mouth of Strawberry Creek where the creek emptied into San Francisco Bay to the west. The site was covered in a marshy lagoon at the outflow of the creek, as corroborated by the geotechnical findings as well as historic maps which show the site prior to development.</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
		<p>The Creek and Watershed Map of Oakland and Berkeley (Sowers and Richard, 2009), shows the southern two-thirds of the site to have been occupied by a willow grove marshland (circa 1850) that were representative of the creek channel and flood plain area of Strawberry Creek during the same time period. The same map shows the creek mouth eventually emptying into a small tidal inlet of San Francisco Bay further to the west of the site (south and west of the Truitt and White property), and the northernmost portion of the site to be part of the land mass outside the marsh area. Further subsurface investigation confirmed subsurface conditions consistent with the topographic and geologic history of the site; i.e., the site’s location on filled marshland of Strawberry Creek within the approximate southern four-fifths of the site, and adjacent older, relatively competent alluvial deposits along the northern edge of the site bordering Hearst Avenue (The general location of the applicant’s planned Linear Open Space).</p> <p>The shellmounds as reported in published literature, and shown on a map by Radbruch (USGS, 1957) are estimated to</p>

Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
		<p>have occupied the current adjacent Truitt and White property on the west side of the UPRR tracks, and an area east of 4th Street, centered on Hearst Avenue. A review of the USGS mapping from 1856 to 1870 collaborates these locations. Furthermore, a 1895 USGS topographic map (San Francisco 15" Quadrangle) was reviewed that showed the mouth of Strawberry Creek (originally located south and west of the Truitt and White property) was filled, and the creek channel was diverted to the south side of University Avenue.</p> <p>The site, situated within the former Strawberry Creek floodplain/ marsh area, was subsequently overlain by artificial fill sometime in the latter half of the 19<sup>th</sup> century during initial development of the area when development occurred on the proposed project site. Currently, Strawberry Creek is contained within an underground storm drain or culvert below University Avenue, emptying into San Francisco Bay west of the Eastshore Freeway (I-80) on the south side of University Avenue, Geologic maps indicate native materials underlying the site and Strawberry Creek alluvial and marsh deposits to consist of Quaternary-age</p>



Table 4: BMC Title 3 Boards, Commissions and Committees		
Chapter 3.24 Landmarks Preservation Commission		
Provision	Applicability	Compliance
		<p>alluvial fan of the Temescal Formation, indicating that this site was predominately wet and inhabitable.</p> <p>This analysis is undisputed, and confirms that the Project site contains no shellmound. Therefore, there is no potential that development of the Project site could adversely affect the features for which the site was designated a landmark.</p>
Section 3.24.350 Applicability of provisions.		
<p>A. No application for a permit to construct, alter or demolish any structure or other feature on a site, filed subsequent to the day that an application has been filed, or a resolution adopted to initiate designation of the said site as a landmark, an historic district, or a structure of merit, shall be approved while proceedings are pending on such designation; provided, however, that after one hundred eighty days have elapsed from the date of initiation of said designation, unless the application has been suspended pursuant to Sections 3.24.220 through 3.24.250, if final action on such designation has not been completed, the permit application may be approved.</p>	<p>Not applicable to the Project. The Project site was designated a landmark before the instant application was filed.</p>	<p>Not applicable.</p>

<b>Table 4: BMC Title 3 Boards, Commissions and Committees</b>		
<b>Chapter 3.24 Landmarks Preservation Commission</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
B. The provisions of this chapter shall be inapplicable to the construction, alteration or demolition of any structure or other feature on a proposed landmark site, historic district or structure of merit site, where a permit for the performance of such work was issued prior to the day that an application has been filed or a resolution adopted to initiate the designation of the said landmark site or historic district, and where such permit has not expired or been cancelled or revoked, provided that construction is started and diligently prosecuted to completion in accordance with the building code. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 15, 1974)	Not applicable to the Project. The Project site was designated a landmark before the instant application was filed.	Not applicable.

<b>Table 5: BMC Chapter 21.21 Parcel Maps (Four or Less Parcels)</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<b>Section 21.24.010 Standards.</b>		

**Table 5: BMC Chapter 21.21 Parcel Maps (Four or Less Parcels)**

Provision	Applicability	Compliance
<p>All parcels proposed to be created by subdivisions containing four or fewer parcels will conform to the following standards, except those conforming to the standards for lot line adjustments set forth in Section 21.32.010.</p> <p>A. All lots shall have frontage on public streets, except for certain hill areas where the terrain may make direct street frontage unfeasible. For such hill area developments, lots lacking street frontage shall be served by access strips not less than fourteen feet wide.</p> <p>B. All lots shall meet the area requirements of the zoning ordinance of the City for the district in which they are located.</p> <p>C. The side lines of lots shall run at right angles or radically to the street upon which the lot faces, insofar as is practicable. This standard may be modified where severe topography is present, with the approval of the City engineer.</p> <p>D. All lots shall have adequate drainage. The developer must install any drainage structures which are needed. Obstruction of natural streams or channels will not be permitted.</p> <p>E. All lots shall have an adequate water supply for domestic and fire fighting purposes, and shall have access to adequate sanitary sewers.</p> <p>F. Where off-street parking required for existing buildings will no longer lie on the same parcel as the building served, replacement parking shall be provided and the map shall show the location of the replacement parking facilities.</p> <p>G. Provisions relating to dedications and offers of dedication on final parcel maps shall conform to the requirements for final maps, except that the City Engineer is authorized to accept dedications and offers.</p>	<p>Generally applicable objective standards. To the extent the City’s determinations in sections C-E are based on any criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>The Project complies with all applicable standards, as described on the map and related submittals.</p>

<b>Table 5: BMC Chapter 21.21 Parcel Maps (Four or Less Parcels)</b>		
<b>Provision</b>	<b>Applicability</b>	<b>Compliance</b>
<b>Section 21.24.040 Approval of parcel maps</b>		

**Table 5: BMC Chapter 21.21 Parcel Maps (Four or Less Parcels)**

Provision	Applicability	Compliance
<p>The regulations described in Sections 21.16.010 through 21.16.090 shall apply to the approval of all parcel maps with the exception that the advisory agency under Government Code Section 66415 for purposes of approval of parcel maps shall not be the Planning Commission, but shall be the City Manager or his or her designee and accordingly that no public hearing is required for approval of a parcel map. All other provisions of Section 21.16.010 through 21.16.090 continue to apply to approval of parcel maps.</p> <p>21.16.047 Planning Commission action.</p> <p>The Planning Commission may approve, conditionally approve, or deny the tentative map.</p> <p>The tentative subdivision map may be denied by the Planning Commission on any of the grounds provided by City ordinance or the Subdivision Map Act. The Planning Commission shall deny approval of the tentative map if it makes any of the following findings:</p> <p>A. That the proposed map is not consistent with applicable general and specific plans.</p> <p>B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.</p> <p>C. That the site is not physically suitable for the proposed density of development.</p> <p>Objective Zoning and Design Standards                      The proposed improvements are likely to cause substantial environmental damage or substantially</p>	<p>The requirement to seek a discretionary approval does not apply pursuant to SB 35. Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). The standards listed in this provision involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	<p>Not applicable.</p>

1900 Fourth Street

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Provision	General Plan and West Berkeley Plan Conformance
<p><b>City of Berkeley General Plan Policies:</b> The site is designated by the City of Berkeley’s General Plan as an Avenue Commercial land use within a West Berkeley Plan Development Node. The proposed project fulfills the following policies of the General Plan related to Infill Development, Avenue Commercial Areas, and implementation of the West Berkeley Plan.</p>	
<p>Policy LU-3 Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale. (Also see Urban Design and Preservation Policies UD-16 through UD-24.</p>	<p>The project proposed at 1900 Fourth will be an infill development that provides housing opportunities and quality commercial space on a currently underutilized lot in the heart of a vibrant residential and shopping district. Architecturally, the project responds well to neighboring land uses and architectural design and scale of the neighborhood, as its massing and height is much more modest and focused on boutique retail spaces, especially closer to the small-scale shopping district north of the site. The massing and residential intensity at the southern portion of the project responds to the multi-family mixed-use buildings existing and proposed on Third and Fourth Streets just south of University to create a vital residential neighborhood that supports the commercial spaces and aesthetically bridges the character of Fourth Street north of University to the character of Fourth Street south of University. Additionally, the project is environmentally sensitive and utilizes sustainable planning and construction, as it concentrates residential opportunities in an area supported by commercial goods and services and with strong transit access.</p>



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<b>Provision</b>	<b>General Plan and West Berkeley Plan Conformance</b>
<p>Policy LU-11 Pedestrian- and Bicycle-Friendly Neighborhoods.                      Action: A. Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals. (Also see Transportation Policies T-43, T-47, and T-52 and Disaster Preparedness and Safety Policy S-22 Action A.)</p> <p>Policy LU-27 Avenue Commercial Areas                      Actions:                      A. Require ground-floor commercial uses to be oriented to the street and sidewalks to encourage a vital and appealing pedestrian experience.                      C. Provide street trees, bus shelters, and benches for pedestrians in commercial areas.                      D. Provide bicycle facilities and ample and secure bicycle parking wherever appropriate and feasible.</p>	<p>The proposed project does not obstruct any known City-owned pathways or dedicate easements. The project proposes ground-floor commercial uses that are oriented toward the street and sidewalk, in an effort to encourage walking, window shopping, and customers to enter the retail businesses. The project will include street trees and street furniture, and seating, as well as a publicly-accessible community open space element. Bike parking for visitors and customers is proposed along the sidewalk. See attached plan set for details.</p>
<p>Policy LU-27 Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs. (See Land Use Diagram for locations of Avenue Commercial areas. Also see Economic Development and Employment Policy ED-4 and Urban Design and Preservation Policy UD-28.)</p>	<p>The 1900 Fourth project will improve University Avenue as a key corridor in Berkeley by redeveloping an auto-oriented unimproved parcel into an aesthetically striking building with pedestrian-oriented retail, food-service, and commercial spaces that will serve neighbors as well as a broader spectrum of patrons visiting Fourth Street from elsewhere in Berkeley and the Bay Area. This parcel functions as a gateway to Berkeley for those entering from the Interstate 80 or by train, therefore it is especially important that this Avenue Commercial corridor reflects Berkeley’s interest and</p>

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Provision	General Plan and West Berkeley Plan Conformance								
	<p>vibrancy. 1900 Fourth will also draw residents and commercial patrons to the commercial area south of Fourth Street on University Avenue by creating a walkable, safe, and lively connection beyond the overpass, where currently the combined condition of the large surface parking lot adjacent to the overpass creates a desolate or daunting connection between portions of Fourth Street north and south of University Avenue.</p>								
<p><u>Avenue Commercial (Land Use Designation)</u>                      These areas of Berkeley are characterized by pedestrian-oriented commercial development and multi-family residential structures. These areas are typically located on wide, multi-lane avenues served by transit or BART. Appropriate uses for these areas include: local-serving and regional-serving commercial, residential, office, community service, and institutional. Building intensity will generally range from a Floor Area Ratio (FAR) of less than 1 to an FAR of 4. Population density will generally range from 44 to 88 persons per acre.                      For information purposes, the compatible zoning districts for this classification are shown below with accompanying development standards.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 20%;">Zoning District</td> <td style="width: 20%;"></td> <td style="width: 20%;">Maximum FAR</td> <td style="width: 20%;">Maximum Height</td> </tr> <tr> <td>West Berkeley Commercial (C-W)10:</td> <td>3</td> <td>40-50 ft</td> <td></td> </tr> </table>	Zoning District		Maximum FAR	Maximum Height	West Berkeley Commercial (C-W)10:	3	40-50 ft		<p>The proposed project includes residential, commercial, and open space uses consistent with the uses allowed within the Avenue Commercial district. The project proposes an FAR of 2.98 consistent with the FAR standard of the land use designation. In terms of population density, this project increases population density within areas designated for Avenue Commercial designation; however, citywide, the population density in the Avenue Commercial Areas remains below the top-end of the given range.</p> <p>Pursuant to the State Density Bonus Law, the applicant is entitled to a waiver of the requirement to construct a building that would exceed 50 ft. maximum height and four stories. The proposed project will be six stories and have a maximum height of 70’-8”.</p>
Zoning District		Maximum FAR	Maximum Height						
West Berkeley Commercial (C-W)10:	3	40-50 ft							

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<p><b>University Avenue and West Berkeley Nodes</b> Both the West Berkeley Plan and the University Avenue Strategic Plan established specific "nodes" along University Avenue and San Pablo Avenue in which specific regulatory policies and programs would be applied as an overlay to accomplish area plan goals for revitalization in these specific locations. See the Berkeley Zoning Ordinance, the West Berkeley Plan, and the University Avenue Strategic Plan for more detail.</p>	<p>The project only proposes uses on the list of “Uses Permitted” in the C-W district. As defined in the West Berkeley node use requirements of 23E.64.040.E, and the definitions found in Zoning Ordinance Section 23F, the non-residential components of the proposed mixed use project will only be used for retail sales, personal/household services, banks, food and alcohol service, lodging, entertainment and assembly uses, and required access to and lobbies serving upper-story uses. Consistent with Berkeley’s practice for initial project occupancy, the commercial tenant space components of the ground floor uses will not be defined until building permitting.</p>
<p><b>West Berkeley Plan Policies:</b> The General Plan also calls for implementation of the West Berkeley Plan. Redevelopment of the lot to provide enhanced commercial space and new housing opportunities satisfies the use envisioned for the site by the West Berkeley Plan, which designates the site as a General Commercial area in a development node (see West Berkeley Plan, Land Use section, Specific Districts in the Concept, Commercial District).</p>	
<p><u>Land Use IV. Goals and Policies</u>  The West Berkeley Plan Preferred Land Use Concept developed a substantial list of land use goals and policies. Taken together, they provide a broad statement of the many activities the Plan seeks to provide for and balance. They provide important points of reference in both developing zoning rules and making land use decisions on specific projects, but of course do not directly answer what should be done on a given site. The key land use goals and policies are listed and explained</p>	<p>The West Berkeley Plan states that it does not impose objective standards pursuant to Chapter 7, Land Use Regulations of the West Berkeley Plan. The C-W (West Berkeley Commercial) Zoning designation is a direct implementation of the West Berkeley Plan and as demonstrated in the C-W analysis above, the project is consistent with all of the C-W zones relevant objective zoning standards.</p>

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<p>below. It should be noted that many goals and policies with an important bearing on land use are found in the Economic Development, Design, and Housing Elements.</p>	
<p>Land Use Policy 1.C: Providing space for, and designating appropriate locations for-- in planning and zoning policies--both neighborhood and regional serving retail businesses.</p>	<p>The proposed project will provide appropriate spaces for a variety of commercial retail and restaurant businesses, consistent with the character of the surrounding Fourth Street shopping district. Commercial spaces will range in size to support a variety of business types. Each commercial space will have its own unique street presence, enhancing Fourth Street’s character of a range of small and independent shops. Design features such as architectural detailing, streetscape improvements, and the public open space will enhance pedestrian orientation and draw visitors from nearby within the West Berkeley neighborhood, while also supporting substantial space for vehicle parking, making the area accessible for visitors from Berkeley as a whole, as well as visitors from throughout the Bay Area.</p>
<p>Land Use Policy 2.E: Create a Commercial district which will foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian-friendly a manner as possible.</p>	<p>The project design includes retail storefronts oriented to generous landscaped sidewalks that will attract pedestrian use, as well as a large open-air linear open space that will significantly enhance the retail street’s vitality, and therefore its attractiveness to pedestrians who wish to enjoy and relax in the outdoor environment. A substantial amount of parking will be provided to ensure the project’s commercial component is accessible by</p>

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	patrons visiting from elsewhere in Berkeley and the Bay Area. However, the design of the parking maintains a strong atmosphere of a walkable retail street.
Land Use Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.	The design of 1900 Fourth uses a variety of scales at different portions of the site to respond to the wide range of neighboring uses on each side of the site. The architectural articulation and detailing, and the step-backs of upper residential portions of the building from Fourth Street, express unique design and articulation to pedestrians on Fourth Street. The lower height of the curved retail building fronting the public open space responds to the stretch of Fourth Street shops to the north, and the shops planned across Fourth Street from the site. The building is modulated into discrete segments that are consistent with the smaller scale of surrounding structures. The height and massing for the residential portions of the project will be concentrated at the west and south sides of the project to respond to the mixed-use buildings on Third and Fourth Street south of University Avenue, and to block noise from the railroad and highway to the west. This scale and design is a concept deliberately aimed to respect and support the project’s surroundings.
Land Use Guiding Principle 9: Retail uses should be clustered, to strengthen existing retail areas, to make them walkable, and to prevent	The proposed project enhances the existing retail cluster on Fourth Street, and strengthens the walkability of the area by eliminating a full-block gap in the continuity of the pedestrian

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<p>retail sprawl.</p>	<p>experience, as the site is currently a surface parking lot. As such, the project will also strengthen retail spaces on Fourth Street south of University. Currently it is unattractive for pedestrians to continue from Fourth Street north of Hearst all the way to University, as there is a distinct feeling that the retail experience ends at the site’s existing parking lot. The retail space wrapping around the building corner at University Avenue creates a dialogue with the retail at the 4<sup>th</sup> &amp; U building, further enlivening this pedestrian connection. By continuing the walkable retail experience throughout the 1900 Fourth block, pedestrians will be encouraged to continue past University Avenue to patronize the art gallery, retail and food and beverage businesses south of University Avenue.</p>
<p><u>VII. Land Use Regulations of the West Berkeley Plan</u>  <u>- for adoption in principle</u>  <u>Status of the Regulations</u>                      The land use regulations below are central to the West Berkeley Plan. They spell out generally what uses are permitted and prohibited in each of the districts created by the Plan, what allowable height and bulk standards would be, and set forth a series of regulatory concepts for special situations. These include limits on changes of use of manufacturing facilities, on buffers between residential and heavy manufacturing sites, and other issues. They are much of what the framers of the West Berkeley Plan understand to be the content of the</p>	<p>Residential and mixed-residential uses are allowed within the General Commercial areas, specifically with residential above the ground floor in development nodes (see West Berkeley Plan, Land Use section, District Permitted and Prohibited Uses, Commercial District). The C-W (West Berkeley Commercial) Zoning designation is a direct implementation of the West Berkeley Plan and as demonstrated in the C-W analysis above, the project is consistent with all of the C-W zones relevant objective zoning standards.</p>

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<p>Plan.</p> <p>Nevertheless, these regulations are proposed for adoption in principle only, rather than adoption as an amendment to Berkeley's General Plan (as the rest of the document is). They are proposed for technical reasons. Development regulations such as these should ultimately reside in the Zoning Ordinance, and will be found there once West Berkeley's zoning is brought into conformity with the Plan. City staff anticipates that the zoning will be drafted and approved next year. The procedure for adopting the zoning changes should be relatively streamlined, as it will be relying on the West Berkeley Plan Environmental Impact Report as environmental documentation. If these regulations were adopted as part of the General Plan, any change to them, however minor, would require a General Plan amendment. Such amendments are--because of state planning law--procedurally complex, and limited in number.</p> <p>For these reasons, adoption of this section in principle is recommended. Such adoption will make clear that zoning provisions should closely follow the Plan, while assuring the most appropriate and expeditious procedure for enacting and amending that zoning.</p>	