

ATTACHMENT 1

FINDINGS AND CONDITIONS

JANUARY 22, 2009

Changes from December 11, 2008 version shown in ~~strikeout~~/underline.

1200 Ashby Avenue

Use Permit #07-10000133

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21084, et seq.) pursuant to Section 15332 of the CEQA Guidelines (Class 32 "In-Fill Development Projects"), as follows:
 - a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications and concessions pursuant to State density bonus law.
 - b. The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.
 - c. The site is already developed and has no value as habitat for endangered, rare or threatened species.
 - d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets, and will actually help reduce congestion at the Ashby/San Pablo intersection by dedicating land along the Ashby frontage of the site, which will allow the installation of a westbound left-turn lane and signal on Ashby.
 - e. The site is already served by required utilities and public services, which will also adequately serve the project.

Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, nor any cumulatively significant impacts (such as traffic), nor will it adversely impact any designated historical resources.

GENERAL NON-DETRIMENT FINDINGS

2. Pursuant to BMC Section 23B.32.040, the Zoning Adjustments Board finds that project will not, under the circumstances of the particular case existing at the time at which the

application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City for the following reasons:

- A. The project would add vitality, pedestrian activity and neighborhood-serving commercial uses to the neighborhood by providing substantial new ground-floor commercial space and 98 new dwelling units to support those uses and other businesses in the neighborhood.
- B. The project would be compatible with surrounding land uses, which are similar to those of the project, and would promote the economic vitality of the San Pablo Avenue Corridor, the Ashby/San Pablo commercial node, and the West Berkeley Plan. The project would be compatible with adjacent residential uses, particularly those on Carrison Street, because the commercial driveway is located on Ashby Avenue, the building steps down to three stories at the southeast corner, and it provides setbacks of eight to ten feet along the east property line, including a new fence and landscaping along the southeast property line.
- C. The project would improve the pedestrian environment and appearance of a prominent “gateway” location by redeveloping a vacant property with a mixed use building containing ground floor uses that would generate pedestrian activity and visual interest along the street frontage.
- D. The project would provide 15 affordable housing units as set forth in Condition of Approval 68, ~~8 for “very low income” households~~, thereby helping to meet the City’s affordable housing goals.
- E. The project meets the City’s minimum residential parking requirements, and has a commercial parking shortfall of only 4 spaces; parking analysis indicates that the lack of these four spaces would not substantially reduce the availability of parking in the vicinity, and it would not generate any significant traffic impacts, as stated in Finding 1 above.
- F. The project would not result in significant additional traffic on nearby residential streets, because the commercial driveway would be located on Ashby Avenue, and a left-turn pocket would be provided on San Pablo Avenue to facilitate access to the residential driveway on Carrison Street from San Pablo and minimize the use of Mabel and Carrison Streets. The project also helps minimize the use of Mabel and Carrison Streets by dedicating land along the Ashby frontage of the site that will allow a left-turn signal to be installed on westbound Ashby, thereby reducing congestion at Ashby and San Pablo and encouraging the use of this intersection rather than residential streets. Due to these factors, the project would increase weekday traffic by 5 percent on Mabel Street and 11 percent on Carrison Street. The weekend increase would be 4 percent on Mabel and 7 percent on Carrison.

This increase is well below the threshold of 25 percent at which traffic increases become noticeable to most observers.

DENSITY BONUS / AFFORDABLE HOUSING FINDINGS

3. Pursuant to Government Code Sections 65915(b) ~~and 65915(n)~~, and BMC Section 23C.12.050.A, the Zoning Adjustments Board (ZAB) makes the following findings for density bonus entitlements:
 - A. The project is entitled to a density increase of ~~35~~32.5 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and ~~(g)(1)~~, plus ~~two one~~ additional concessions or incentives, ~~as set forth in Finding 4 below~~which the applicants have chosen not to request.
 - B. Under the City's methodology for implementing density bonuses under Section 65915, the "base project" for the proposed 98-unit project consists of commercial space and parking on the ground floor, and 74 residential units on the first, second, third, and fourth floors, with an average unit size of ~~1,101~~1,063 square feet.
 - C. The applicants have committed that 15 (20.3 percent) of the units in the 74-unit "base project" will be affordable for ~~lower~~ income households if the project is built as a condominium project, and 8 (10.8 percent) of the base project units will be affordable for very low income households if the project is built as a rental project, as more fully set forth in Conditions of Approval 68. This commitment entitles the applicants to a minimum density bonus of ~~35~~32.5 percent (~~26~~25 units after rounding) with a total area of ~~29,729~~26,578 square feet. The applicants have requested a density bonus of 32.4 percent (24 market-rate units) with a total area of ~~22,773~~25,037 square feet.
 - D. The approval of a density bonus to promote the development of affordable housing at a location well-served by transit is consistent with the policies of the General Plan Housing Element (Policy H-16) and other West Berkeley Plan Policies cited in Finding No. 5, below.
4. In accordance with Government Code Section 65915, the ZAB hereby grants Variances to: a) allow five stories where four are normally allowed; and b) allow a building height of 60 feet, 3 inches where 50 feet are normally allowed; ~~and c) allow inclusionary unit sizes and locations that are not "reasonably dispersed throughout the project," as required by BMC Section 23C.12.040.D.~~ The ZAB also grants a Use Permit to waive the required 15-foot setbacks at the northeast and southeast corners of the site (Ashby Avenue and Carrison Street). The basis for these approvals is as follows.

- A. This project is a “housing development” as defined in Government Code Section 65915(j) and qualifies for a ~~35~~32.5 percent density bonus as stated in Finding 3.C above.
- B. Government Code Section 65915(e) allows the applicant to request waivers or modifications of development standards in order to construct a project proposed under State Density Bonus law. The law requires a local government to waive development standards if these standards would preclude construction of density units in a particular proposed project. The form by which the City does so is a Use Permit or Variance, whichever would otherwise be required if the waiver or modification were not required by Section 65915.
- C. The density bonus units cannot be accommodated within the otherwise maximum allowable residential building envelope of the C-W District, which allows up to four stories and a height of 50 feet, and requires 15-foot setbacks at the northeast and southeast corners of the site (on Ashby Avenue and Carrison Street), and therefore the C-W standards must be modified to accommodate the density bonus units. In this case, consistent with the applicant’s request, the ZAB waives and/or modifies these standards for the following reasons:
1. The proposed fifth story is the most appropriate, and least detrimental, way to accommodate the density bonus units because it maintains other amenities and mass reductions in the project, such as an interior courtyard, a community plaza on San Pablo Avenue, and a three-story height at the southeast corner of the building. In addition, the five-story height is consistent with other approved mixed-use projects on commercial corridors in the City and the immediate vicinity (e.g., 2747 San Pablo Ave.).
 2. The fifth story allows for interior courtyards and gardens that provide better natural light and ventilation to the units, thereby reducing energy consumption and greenhouse gases. A four-story building of similar size would not be able to provide courtyards of the same size and quality, since a greater portion of each floor would have to be devoted to residential space instead.
 3. The building height of 60 feet, 3 inches is necessary to provide a 15-foot ceiling in the ground floor commercial space, which enhances the quality and viability of the space and thereby benefits the neighborhood, and 9-foot ceilings on the residential floors, which is considered the minimum ceiling height in residential construction and enhances natural light and quality of life for residents, thereby helping to discourage resident turnover.
 4. The reduced setbacks at the northeast and southeast corners of the building are necessary to accommodate part of the project’s density bonus. Without these setbacks, amenities currently proposed in the project, such as an interior courtyard, a community plaza on San Pablo Avenue, and a three-story height at the southeast corner of the building, would have to be reduced or eliminated.

~~E. As provided in Government Code Section 65915(d)(2)(B), the applicant has requested a concession to locate all inclusionary units on the second through fourth floors, and none on the fifth floor. This arrangement does not comply with Section 23C.12.040.D, which requires that inclusionary units be “reasonably dispersed throughout the project” because the 5th floor contains almost one quarter of the total units in the building, and there is no particular physical reason why such a large portion of the units cannot be on the fifth floor, since it is roughly the same size as the other floors. Furthermore, the fifth floor offers greatly enhanced views, and the City’s longstanding approach to “reasonable dispersion” is that inclusionary and market-rate units should be more or less comparable throughout the building, with respect to floors, views, and other amenities. The Zoning Adjustments Board grants these concessions based on the following:~~

~~1. The applicants have demonstrated, and staff has verified, that the concession is necessary to provide for the project’s affordable housing costs, because the density bonus units do not fully provide for these costs.~~

~~2. The concession would not have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources.~~

~~3. Based on Findings 4.E(1) and (2) above, and pursuant to Government Code Section 65915(d)(1), there is no basis for the City to deny the requested concession.~~

5. The project is a “housing development project” as defined in Government Code Section 65589.5(h)(2)(B), because it consists of residential uses and nonresidential uses which are limited to neighborhood commercial uses and to the first floor of a five-story building. The project’s nonresidential uses qualify as “neighborhood commercial” uses because the project’s largest possible commercial space will be 6,106 square feet, which is too small for a region- or area-serving business. In addition, the applicants have requested flexibility to allow up to 8 commercial tenants, in which case the largest space would be far less than 6,106 square feet.

OTHER REQUIRED FINDINGS

6. **(C-W General Findings)** Pursuant to BMC Section 23E.64.090.B, the Zoning Adjustments Board finds that:

1. The project is consistent with the purposes of the C-W District in that it provides additional commercial spaces that will primarily serve area residents and/or businesses (purpose B), provides mixed income housing that will support local retailers and transit lines (purpose G), and appropriately intensifies development on an underutilized site (purpose H).

- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

ADDITIONAL CONDITIONS

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

9. **(Dedication of Right-of-Way on Ashby)** Within 180 days of project approval, or prior to issuance of a building permit, whichever is earlier, the applicant shall grant the City and/or State (as necessary) an irrevocable offer of dedication of the northernmost five feet of the project site, adjacent and parallel to Ashby Avenue, to allow installation of a westbound left-turn lane and signal on Ashby. This offer shall constitute exercise of the Use Permit unless it is rejected within 60 days.

Prior to Issuance of Any Building Permit:

10. Prior to applying for a building permit, the applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
11. Prior to issuance of a building permit, the applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
12. Prior to issuance of a building permit, the applicant shall review the Draft LEED NC Checklist and submit any changes that affect the project's score, along with comments on revised measures, to the project planner. Provided that the project qualifies, the applicant shall also apply for PG&E's "Savings by Design" program for new commercial construction and submit a copy of the application to the project planner.
13. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

- Noise Management Individual _____
Name Phone #

height of 34 inches, and minimum knee space of 27 inches high, 30 inches wide and 19 inches deep.

60. All Sidewalk Cafe Seating components shall be stored in a secure location on private property when not in use.
61. The permittee shall regularly inspect and clean the Sidewalk Cafe Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be placed immediately inside the entrance of the establishment.
62. The permittee shall monitor and control the use of the Sidewalk Cafe Seating so as to prevent disturbance of the surrounding neighborhood.
63. No alcoholic beverages shall be served to the Sidewalk Cafe Seating at any time.
64. Pursuant to BMC Chapter 12.70, smoking is prohibited in the Sidewalk Cafe Seating, and "No Smoking" signs shall be conspicuously posted in the seating area.
65. Sidewalk Cafe Seating shall not be used before 7 a.m. or after 10 p.m. without prior approval of the Zoning Officer. The Zoning Officer may modify these hours as necessary to avoid detriment or to achieve conformance with revised City standards or policies.
66. If the seating authorized by this Use Permit is found to be in conflict with existing or proposed public facilities or improvements, such seating shall, upon written demand of the City Manager or his/her designee, and at the sole expense of the permittee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said demand within a reasonable period of time, the City may relocate such seating at the expense of the permittee. Noncompliance shall also be a violation of the Ordinance.
67. Permittee's Liability: By accepting this Permit, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged by reason of the permittee's installation, operation, maintenance or removal of said Sidewalk Cafe Seating.

Inclusionary Housing Requirements:

68. Inclusionary Affordability Requirements.

A. Number of Below Market Rate Units. The project shall provide for fifteen (15) below market rate dwelling units ("BMR Units"), which are required to comply with both the City's Inclusionary Housing requirements (BMC Chapter 23C.12) and the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be as shown on the annotated floor plans titled "Inclusionary Housing Units – 1200 Ashby" and dated January 22, 2009, unless the selection of other units is

authorized in writing by the City, pursuant to BMC Chapter 23C.12 and the Regulatory Agreement.

B. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Chapter 23C.12, Government Code Section 65915, and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. Rents, sales prices, and income qualifications for the BMR Units shall be as set forth in the following Table and paragraphs of this condition.

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

	Year	A		B	
		Condominium Units		Rental Units	
		Qualifying Household Income	Maximum Housing Payments	Qualifying Household Income	Maximum Housing Payments
<u>1</u>	<u>1-30 (Govt. Code § 65915)</u>	<u>15 units: 80% AMI</u>	<u>15 units: 30% of 70% AMI</u>	<u>8 units: 50% AMI 7 units: 81% AMI*</u>	<u>8 units: 30% of 50% AMI or Section 8 rents 7 units: 30% of 81% or Section 8 rents*</u>
<u>2</u>	<u>31+ (BMC 23C.12)</u>	<u>15 units: 80% AMI</u>	<u>15 units: 3 times 80% AMI</u>	<u>If Section 8 subsidies are available, same as above. If Section 8 subsidies are not available, 15 units at 81% AMI</u>	<u>If Section 8 subsidies are available, same as above. If Section 8 subsidies are not available, 15 units at 30% of 81% AMI</u>

* – In the rental scenario, 8 of the affordable units are being used to qualify the project for a State density bonus (10% of the base project @ Very Low Income level), and are subject to State maximum housing payment standards for the first 30 years (row 1), and to the less restrictive City standards thereafter (row 2). The other 7 units are subject only to the City standards for the life of the project.

C. Affordability and Income Qualification Requirements for Units Providing Qualification for Density Bonus Under Government Code Section 65915 (Density Bonus). For purposes of qualifying the project for a density bonus under Government Code Section 65915, the affordability requirements indicated in Row 1 of Table 1 above shall apply for 30 years from the issuance of a certificate of occupancy by the City of Berkeley. This 30-year period of deeper affordability is required in addition to the affordability requirements mandated by the City's Inclusionary Housing Ordinance, BMC Chapter 23C.12, set forth in Row 2 of Table

1, which apply for the life of the project. In addition, the following provisions shall apply:

1. Maximum homeowner payment or rent, as applicable, shall be adjusted for the family size appropriate for the unit.
2. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
3. Sales Price shall be calculated based upon a maximum monthly housing payment which includes mortgage principal and interest, property taxes, fire and casualty insurance covering replacement value of the improvements, property maintenance and repairs, a reasonable allowance for utilities as described above in subsection C.2 and homeowner association fees.

D. Berkeley Inclusionary Housing Ordinance Requirements. At the termination of the affordability period required by Government Code Section 65915, and for the remaining life of the project, the project affordability shall be determined pursuant to the City's Inclusionary Housing Ordinance, BMC Chapter 23C.12, as set forth in Row 2 of Table 1. In addition, the following provisions shall apply:

1. After 30 years, the requirement that 8 BMR Units be rented at rates that are affordable to households with an income level of not more than 50% of the AMI shall apply only if rental subsidies are available from the federal Section 8 Housing Program or an equivalent program. If no rental subsidies are available, all of the Inclusionary Units shall be subject to the rent ceiling and income qualification for households earning no more than 81% of the AMI. Gross rents shall include an allowance for utility costs, as published and updated by the Berkeley Housing Authority, in accordance with the Inclusionary Housing Ordinance.
2. Gross rent levels of units rented pursuant to the Section 8 Program or its equivalent shall be determined by the regulations of that Program.
3. These requirements apply regardless of whether the residential part of the project is held in condominium or undivided ownership, and regardless of whether an underlying condominium map has been filed.
4. For BMR Units that are sold as condominiums, allowable sale prices shall be determined in accordance with City Council Resolution No. 61,497-N.S.

E. Determination of Area Median Income (AMI).

1. The "AMI" (Area Median Income) shown in Table 1 shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such

income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

2. The applicable AMI for the purpose of determining the allowable rent and allowable sales price for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with Table 2 below:

Table 2. Determination of AMI Based on Unit Size

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

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

G. If the City, based upon this project, is awarded an Infill Infrastructure Grant pursuant to State Proposition 1C (Health and Safety Code Section 53545.12, et. seq.), the inclusionary housing agreement shall be modified to require whatever additional affordability provisions may be required pursuant to the award. In addition, the inclusionary housing agreement may also, with the applicant's written agreement, be modified to require additional affordability provisions, as necessary for any other public grant the City may be awarded based upon this project. This paragraph shall be null and void beginning two years after the effective date of this Use Permit.

~~**A. Number of Inclusionary Units.** The project shall include fifteen (15) inclusionary dwelling units out of a total of 98 dwelling units in the project. The Inclusionary Units shall be as shown on the plans dated November 10, 2008, unless the selection of other units is authorized in writing by the City, pursuant to BMG Chapter 23C.12 and the Regulatory Agreement.~~

~~**B. Sales Prices of Inclusionary Units.** If inclusionary housing units are sold as condominiums, the sales price shall not exceed three (3) times 60 percent (60%) of the Area Median Income (hereinafter referred to as "AMI") as of the date of the sale~~

~~the unit, and as adjusted for the appropriate household size pursuant to City of Berkeley Resolution No. 60,328-N.S.~~

C. Rents of Inclusionary Units. ~~If the inclusionary housing units are rented, the following ceilings shall apply:~~

- ~~1) Eight (8) units shall be rented at a level that is affordable to households with an income level of not more than fifty percent (50%) of the AMI. In the alternative, this requirement may also be met through rentals pursuant to the Section 8 program at the rent levels authorized by that program.~~
- ~~2) Seven (7) units shall be rented at a level that is affordable to households with an income level of not more than eighty-one percent (81%) of the AMI.~~
- ~~3) The **gross** rent levels of units that are not rented pursuant to the Section 8 program shall not exceed 30% of the applicable income level ceiling for the unit (either fifty percent (50%) or eighty-one percent (81%) of AMI). Gross rents shall include an allowance for utility costs in accordance with the inclusionary housing ordinance. Gross rent levels of units rented pursuant to the Section 8 program shall be determined by the regulations of that program.~~

~~The requirements of this section shall apply to rentals of units that are individually owned as condominiums as well as to units in rental projects.~~

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

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

~~E. Contents of Inclusionary Housing Agreement. The inclusionary housing agreement shall include:~~

- ~~1) Designation of the inclusionary units on the project floor plans;~~
- ~~2) Requirements governing the selection of tenants;~~
- ~~3) Requirements governing the marketing and sale of units;~~
- ~~4) City monitoring and reporting requirements;~~
- ~~5) Restrictions on the resale prices of condominium units;~~
- ~~6) Other terms and conditions necessary to ensure compliance with BMC Chapter 23C.12.~~
- ~~7) Any other provisions required for the purpose of qualifying the project for a density bonus under Government Code Section 65915.~~

At All Times:

69. In order to promote a more attractive streetscape, visibility into the ground floor commercial space shall be maintained, and occupants shall not block the windows of such space with shelving, furniture, blinds, curtains, or other window coverings, or any other object that would substantially reduce visibility into the commercial space. Window displays (but not signage) shall be permitted.
70. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.