

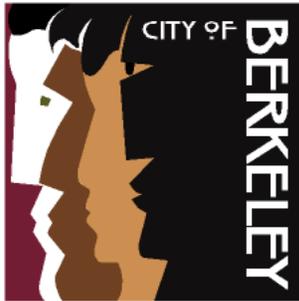
## INDEX TO ADMINISTRATIVE RECORD

2600 TENTH STREET

Use Permit #ZP2023-0031

Prepared: July 9, 2024

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# Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION  
APRIL 25, 2024

## 2600 Tenth Street

Appeal of the Zoning Officer's Decision to approve Administrative Use Permit (AUP) ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.

### I. Background

#### A. Land Use Designations:

- General Plan: M - Manufacturing
- Zoning: MU-LI - Mixed-Use Light Industrial District

#### B. Zoning Permits Required:

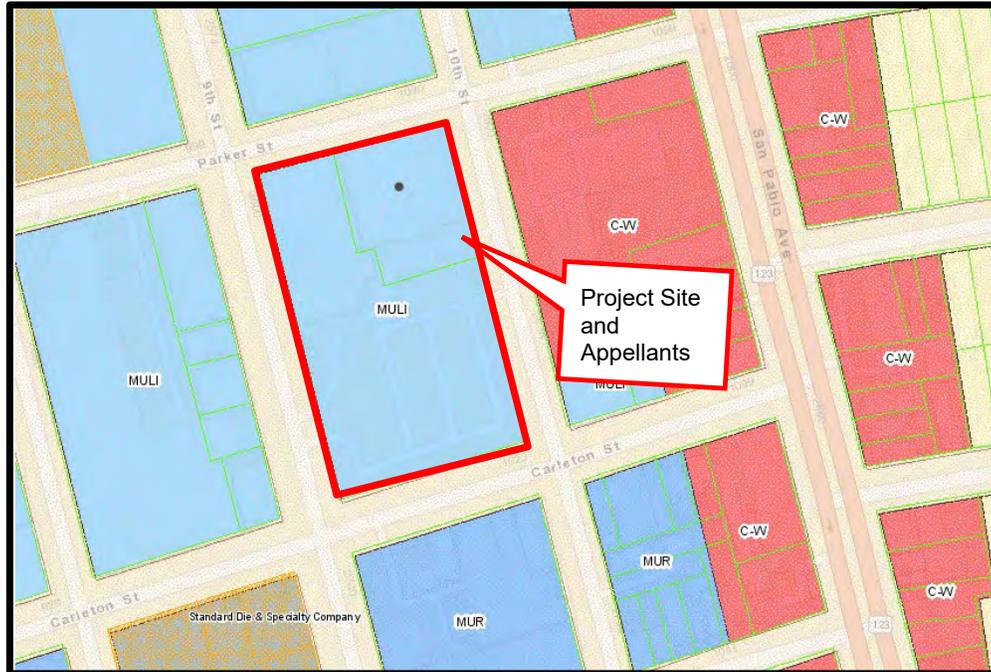
- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

**C. CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

#### A. Parties Involved:

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellants Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

Figure 1: Vicinity Map



Legend:  
 Zoning Districts  
 MU-LI: Mixed Use – Light Industrial District  
 MU-R: Mixed Use – Residential District  
 C-W: West Berkeley Commercial District



Figure 2: Site Plan

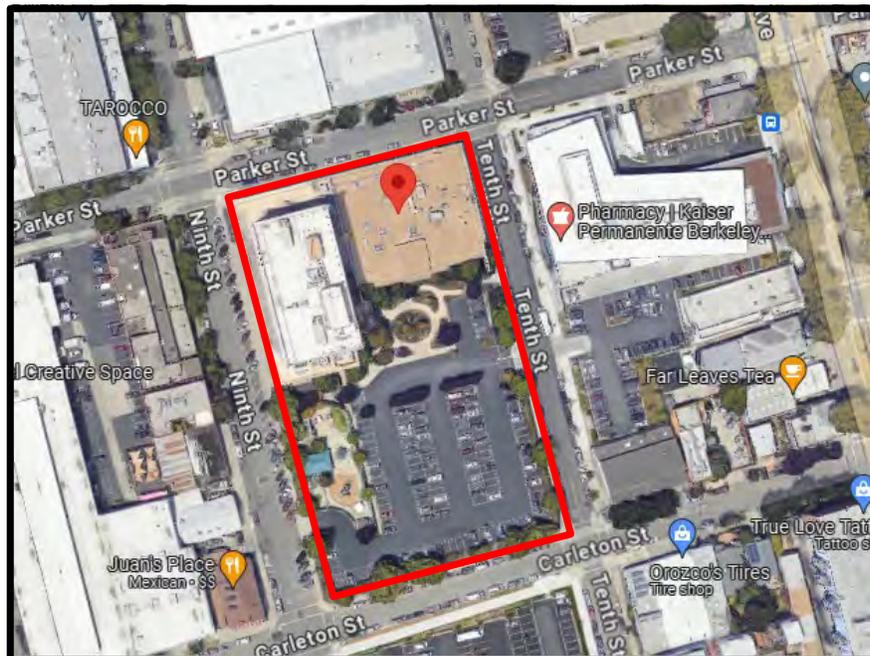
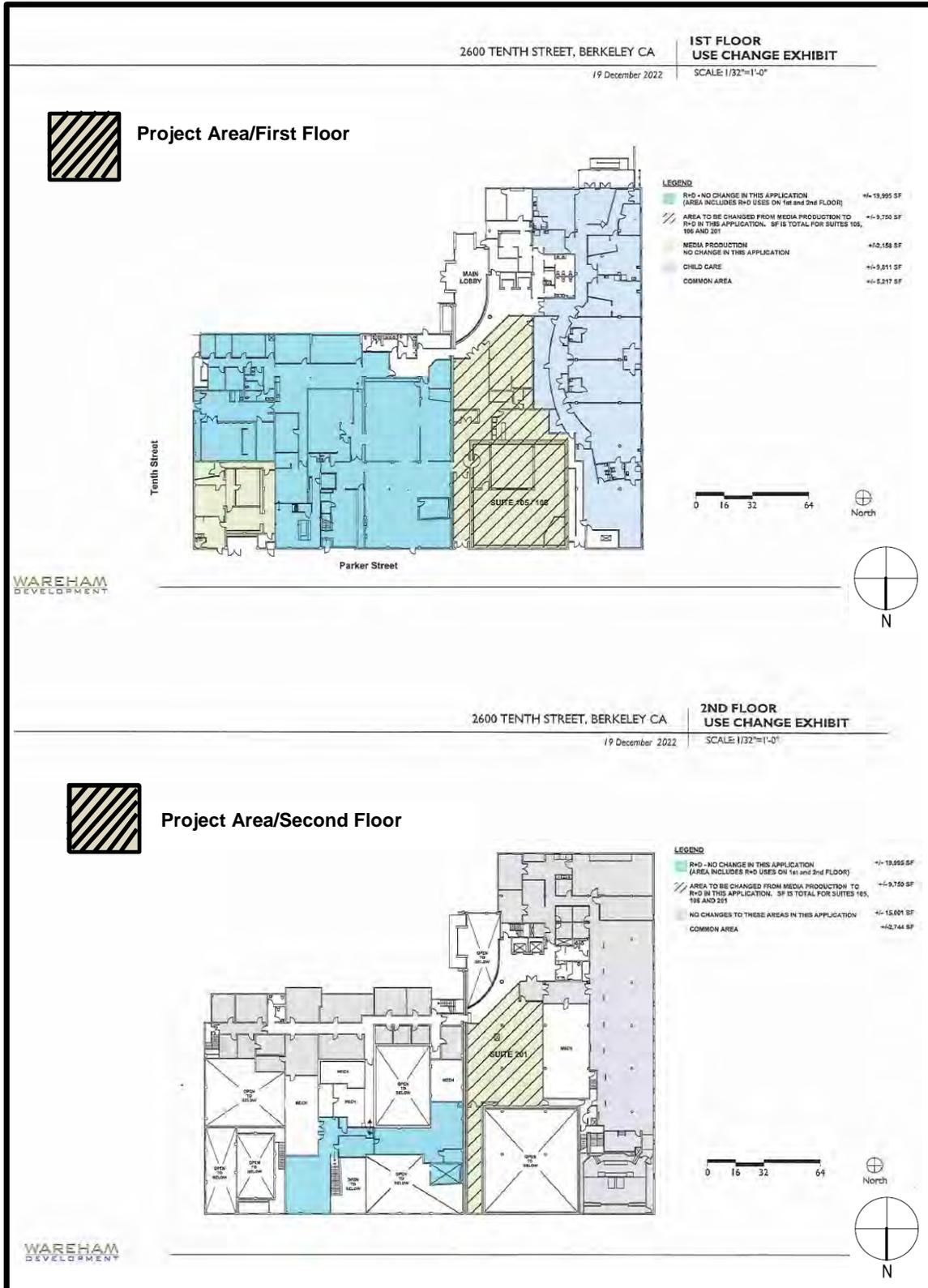


Figure 3: Floor Plans



ZONING ADJUSTMENTS BOARD  
April 25, 20242600 TENTH STREET  
Page 4 of 15**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Office, Media Production, and Child Care	MU-LI (Mixed Use-Light Industrial) District	M (Manufacturing)
Surrounding Properties	North	Light Manufacturing and Warehouse		
	South	Light Industrial and Commercial Uses, various	Mixed-Use Residential (MU-R)	
	East	Medical Office (Kaiser)	West Berkeley Commercial (C-W)	
	West	Offices, Media Production	MU-LI	

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with net new 7,500 square feet of non-residential floor area. The project is a change of use from Media Production to Research and Development. Therefore, this fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is not a housing development project, as defined in BMC 23.328.020 because it does not include the construction of any residential units. Therefore, the inclusionary housing provisions do not apply.
Alcohol Sales/Service	No	This project does not involve alcohol sales/services.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.
Density Bonus	No	This project is not a density bonus project.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a building over 40 years old.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	A "housing development project" is defined as a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage, or for transitional or supportive housing.  The project is a change of use from Media Production to a Research and Development use and would not create new dwelling units, therefore, HAA and the Housing Crisis Act are not applicable.
Housing Crisis Act of 2019 (SB330)		
Oak Trees	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The project site is not located in a zone of the Residential Preferred Parking program.
Seismic Hazards (SHMA)	No	This property is located within an area susceptible to a liquefaction, but not to earthquakes and landslides, as shown on the State Seismic Hazard Zones Map, however, the the project is a change of use, and no new floor area is proposed and any alterations to the interior resulting from dividing tenant spaces would not exceed 50 percent

		of the value of the structure or 50 percent of the existing floor area.
Soil/Groundwater Contamination	No	The project site is not on the Cortese List. The project site is located within the City's Environmental Management Area; however, no ground disturbance or site improvements are proposed. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is one block west of the San Pablo Avenue transit corridor, and is approximately 1 mile southeast of the Berkeley Amtrak station. The site is adjacent to the bike boulevard on Ninth Street and the bikeway on Parker Street, which connect to transitways with access to the greater region. The property is located within 5 minutes of the AC Transit #79 and 604 Bus Routes.

**Table 3: Project Chronology**

Date	Action
March 9, 2023	Application submitted
April 10, 2023	Application deemed incomplete
April 20, 2023	Resubmittal of application material
May 19, 2023	Application deemed complete
November 13, 2023	Notice of Administrative Decision issued
December 4, 2023	Appeal letter received
April 11, 2024	Public hearing notices mailed/posted
April 25, 2024	ZAB appeal hearing

## II. Project Setting

**A. Neighborhood/Area Description:** The subject property is located on the northwest corner of Tenth and Parker Streets, one block south of Dwight Way and one block west of San Pablo Avenue. This area includes office and light industrial/warehousing uses including medical offices to the east (Kaiser Medical outpatient facility), light manufacturing and warehousing to the north, and offices to the west. The subject property is located 1.6 miles northwest of the Ashby Station BART station, 1.1-mile southeast of the Berkeley Amtrak station, and is served by several AC Transit bus routes that operate on San Pablo Avenue and Dwight Way. There are several bike boulevards within one and two blocks of Tenth Street and Channing Way.

**B. Site Conditions:** The project site is a rectangular 114,998 square foot corner lot, consisting of the one-block area bounded by Park Street to the north, Tenth Street to the east, Carleton Street to the south, and Ninth Street to the west. The parcel is currently developed with one building totaling 117,316 square feet: the two-story structure formerly occupied by the Saul Zaentz Media Center, and a seven-story addition for media production, office uses, as well as a child care center, and is served by a 105-space surface parking lot with vehicular access from Ninth and Tenth Streets. The building has pedestrian access via an interior

landscaped plaza. The current uses at the site include a child care center, Media Production and Research and Development.

### III. Project Description

The project scope would change the use of three tenant spaces (suites 105, 106, and 201), totaling 9,750 square feet, from Media Production to Research and Development, and be further divided into up to nine tenant spaces. The existing building has approximately 19,995 square feet of Research and Development space, by changing the use of the three existing tenant spaces the proposed project would result in a total of 29,745 square feet of Research and Development space in the building. No changes to the exterior of the building, nor added square footage are proposed.

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting the application to the City, the applicant installed the yellow application posters in April 2023.

**B. Project Background:** A previous version of this application was submitted in May 2019 requesting a change of use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from Media Production to Research and Development. The Zoning Officer's decision to approve the project was appealed by Alex Wilmer & Sea Wilmer to the Zoning Adjustment Board (ZAB) in November 2021.

At their January 2022 meeting, the ZAB requested that the Planning Department obtain an opinion from the City Attorney regarding the "protected use" status of spaces in the building, including identifying the existing use as either Media Production or Art/Craft Studio. At that time, ZAB continued the item to a later date.

After consulting with the City Attorney's office, the item was placed back on the ZAB calendar for the April 28, 2022 hearing; however, it was continued to the next ZAB meeting due to time constraints. Subsequently, the applicant withdrew the Administrative Use Permit application before the continuation hearing date, and instead obtained a Zoning Certificate (#ZCBL2022-0121) to change 19,555 square feet of area to Research and Development, which was within the size range allowed by-right.

**C. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed scope in ZP2023-0031 would not be detrimental or contribute to a shortage of industrial spaces in West Berkeley. The project would be consistent with the purposes of the District, compatible with the surrounding uses and buildings, comply with the adopted West Berkeley Plan, meet any applicable performance standards, would not induce substantial changes of use away from industrial uses, and would be supportive of the industrial character of the district.

**D. Appeal:** The appeal of the Administrative Use Permit decision was filed on December 4, 2023 by Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC)), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht. (See Attachment 4)

**E. Public Notice:** On April 11, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, aside from the appeal letter, regarding this project.

## V. Appeal Points and Analysis

The appellant raised six main issues in their appeal. For the sake of brevity, these are not re-stated in their entirety. Please refer to the appeal letter for the full text. The summary of the issues raised in the appellants' letter and staff's responses are as follows.

**Appeal Point #1:** The Appellants believe that the designation of the existing use as Media Production is incorrect and that this use ought to be treated as an Art/Craft Studio use subject to the provisions of BMC Section 23.206.050(B) for Protected Non-Industrial Use in the MU-LI and MU-R Districts.

### **Background:**

**Definitions.** Media Production and Art/Craft Studio are separately defined non-industrial uses in BMC Section 23.502.020, Defined Terms.

*“Media Production: Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.”*

*“Art/Craft Studio: An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district’s requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.”*

Art/Craft Studio is considered a Protected Non-Industrial Use in the MU-LI District (BMC Section 23.206.050(B)(1)<sup>1</sup>) provided that the use was (a) legally established as of July 6, 1989, and (b) exists as a single stand-alone use or is combined with residential use in a live/work unit. Media Production is not a protected use.

### **Permitted Uses.**

The established use of the subject site determines what type of zoning permit is required, and whether the provisions of BMC Section 23.206.050, Protected Uses, apply to the project.

Changing from a protected nonindustrial use such as Arts/Crafts Studio to a non-protected use is allowable with either an Administrative Use Permit or a Use Permit, depending on the size (BMC Section 23.206.050(B)(2)), and subject to additional findings for approval that require comparable replacement space to be provided (BMC 23.206.050(B)(4)).

### **Evidence:**

**Established Use.** Staff evaluated the permit history (summarized below), and determined that the established use as of July 6, 1989 was Media Production.

**Site History.** At the time of construction and opening in 1971, the building at 2600 Tenth Street contained three recording studios (one with a separate entrance built specifically for Creedence Clearwater Revival), a mastering room, offices, and a warehouse. Owner Saul Zaentz then expanded the company into film production known as Fantasy Films. The success launched another expansion of the company, and construction of a seven-story addition to the recording studios on the subject site. Known as the Saul Zaentz Media Center, the new facility opened in 1980 and housed a film post-production center and a fourth recording studio.

Thus, the long-existing film and video production use of the complex, constructed in phases, is consistent with the current definition of Media Production. This use was previously known as Radio, Television or Audio/Sound Recording and/or Broadcast Studios: Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.

Specifically, the Saul Zaentz Film Center was a commercial arts business service consisting of several recording and editing studios and office spaces for the purpose of producing various forms of media, including music and film.

An Art/Craft Studio is commonly differentiated from Media Production by the scale and purpose of the establishment, understood to encompass studio spaces for art production and performing art instruction, rehearsal studios, and theatre spaces.

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<sup>1</sup> The full list of protected non-industrial uses per BMC 23.206.050(B): Art/craft studio; art galleries, ancillary to art studios when located in the same building; child care facility, fine arts performance, instruction and rehearsal studios (dance, music theater); theaters, stage performance, but excluding motion picture theaters

Media Production uses, by contrast, are “commercial arts and art-related business services” involving various media types.

Land Use Division records indicate that, subsequent to the establishment and expansion of the Media Production use in 1971 and 1980, zoning certificate business licenses were issued to multiple enterprises leasing space from the Center starting around 1998, after the 1989 cut-off date for establishing a protected use. These included media production and artistic uses such as film making, writing office, and television programming, as well as less related uses including computer software design, a health information company, a consulting office, and a general business office for import-export of goods. Further, existing Art/Craft Studio uses that are or have been located in the building have not existed as a single stand-alone use, or been combined with residential use in a live/work unit. Therefore, the existing uses of the building are not protected use.

### **Conclusion:**

The existing film production use most accurately meets the Media Production definition. Furthermore, even if the existing uses were considered an Art/Craft Studio, it still would not be a protected nonindustrial use because it was not the established use of July 6, 1989, and since a number of other commercial uses have shared the building with the existing use, it would not have been a single stand-alone use. Because Media Production is not a protected non-industrial use, the provisions in BMC 23.206.050(B) are not applicable to the project. An Administrative Use Permit to establish a Research and Development use that would have a total area that exceeds 20,000 square feet, per BMC 23.206.020 Allowed Land Uses, is the correct permit pathway.

**Appeal Point #2:** Appellants note that the City’s Planning Staff Reports such as the 2008 Variance Staff Report, considers the recording, mixing, and screening studios as a “Protected Use” in the MU-LI District whereas the most recent staff report (AUP ZP2023-0031 Findings and Conditions) describes the same use as a non-protected industrial use.

### **Background:**

Variance #07-10000132, approved in March 2008, allowed for conversion of 9,961 square feet of office and storage space on the ground floor to a child care center for up to 100 children and conversion of 31 parking spaces in the northwest corner of the parking lot to 7,500 square feet of outdoor play area. The Findings and Conditions identified the existing use as Media Production and refer to it as a protected use.

The subject Administrative Use Permit under appeal would allow the change of use of three tenant spaces, totaling 9,750 square feet, from Media Production to Research and Development use, and create up to nine new tenant spaces. The Findings and Conditions do not refer to Media Production as a protected use, would allow a change of use more than 5,000 square feet with an AUP, and do not include the findings required to change a protected nonindustrial use to a non-protected use. (Attachment 1)

**Evidence:**

**2008 Review.** The previous variance application authorized the conversion of established office uses and storage space to a child care center. Since child care was not an allowed use in the MU-LI, a Variance was required to establish that use on the site. That permit was not in any way related to a change of use from Media Production or Arts/Crafts Studio to another use. While the analysis refers to the Media Production uses elsewhere in the building as a protected use, it is in error. Media Production was not the subject of the permit, and the mis-identification as a protected use had no bearing on the outcome of the variance decision. It cannot be considered a binding determination for future projects which must be evaluated based on the facts and requirements applicable at the time a decision is made on an application<sup>2</sup>.

**Change of Use:** As discussed in-depth in Section V.A. Appeal Point #1 of this report, per BMC Section 23.206.050(B)(1), Media Production is not listed as a protected industrial use and may be changed to Research and Development per BMC Section 23.209.020(A), Allowed Land Uses and Permit Requirements. Also, as noted above, even if the existing use could be considered an Art/Craft Studio, it would not be considered a protected use because it was not established as of July 6, 1989 and is not a standalone use (or combined with residential uses) because a number of other commercial enterprises that were clearly not Art/Craft Studios have shared the building with artistic uses. For these reasons, the existing use of 2600 Tenth Street is not a protected use. The change of use from Media Production to Research and Development is not subject to the permit requirements and additional findings for changing a protected nonindustrial use to another use per BMC Table 23.206-9. An Administrative Use Permit to convert 9,750 square feet, resulting in a total of 29,745 square feet total Research and Development, is the correct permit pathway subject to the required findings for non-detriment, tenant space reconfiguration, and Manufacturing Districts only.

**Conclusion**

The existing use is still best identified as Media Production and not considered as a protected nonindustrial use by BMC Section 23.206.050(B). An erroneous reference in prior documents cannot supersede the applicable requirements and definitions present in the Zoning Ordinance, BMC Title 23. Per BMC Section 23.406.040(E)(4), required findings shall be made based on the circumstances existing at the time a decision is made on the application.

**Appeal Point #3:** Appellants believe that the proposed project would be detrimental to the general welfare of those working at 2600 Tenth Street because the conversion of Media Production to Research and Development diminishes the opportunities for filmmakers and

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<sup>2</sup> BMC Sections 23.406.030(F)(4) and 23.406.040(E)(4) Findings for Approval state that the "required findings shall be made based on the circumstances existing at the time a decision is made on the application."

video artists to collaborate on projects and limits their economic and cultural contributions to the general welfare of the City.

**Background:**

Per BMC Sections 23.406.030(F)(1) and 23.406.040(E)(1), Findings for Approval, the review authority shall find that the proposed project or use:

- a. *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 the proposed use; and*
- b. *Will not 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.*

Per BMC Sections 23.406.030(F)(3) and 23.406.040(E)(3), when acting on a project the review authority must consider the proposed land use and the structure or addition that accommodates the use.

**Evidence:**

The proposed project includes a change of use from Media Production to Research and Development within an existing building in the MU-LI District and would be at a location that is planned for mixed-use light industrial development. Per BMC Section 23.206.020, this use is allowed in the MU-LI zoning district with an AUP. The project would convert three existing Media Production tenant spaces with no changes to the exterior of the building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) Development Standards and 23.322.030(C)(2) Parking and Loading, including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097<sup>3</sup>, ample on-site parking is currently provided.

The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. The proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of the West Berkeley neighborhood.

**Conclusion:**

<sup>3</sup> [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

Considering the proposed Research and Development use and the structure that would accommodate the use, the location, site, and building are suitable for Research and Development, and would not be detrimental to the welfare of persons working in the area.

**Appeal Point #4:** The appellants contend that the change of use does not better serve the purposes of the district as required by BMC Section 23.206.030(B), Tenant Space Reconfiguration.

**Background:**

To approve an AUP to create between six to nine tenant spaces in the MU-LI, the review authority must find that they would not create or contribute to a shortage of industrial spaces in West Berkeley for the spaces being converted and either (a) the reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact, or (b) the reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

**Evidence:**

The findings referenced are only required for the tenant space configuration, and do not apply to changes of use.

**Conclusion:**

Since this provision is not applicable to the appeal point about change of use, no additional analysis is required.

**Appeal Point #5:** The appellants contend that the change of use is not consistent with the following two MU-LI District purposes: encourage development of a mixed-use light industrial area for a range of compatible uses; and encourage the creation and continuation of well-paid jobs which do not require advanced degrees. They state that there is plenty of space already dedicated to Research and Development in Berkeley while there is not enough for artist and film makers, and that most Research and Development jobs require advanced degrees.

**Background:**

Pursuant to BMC Section 23.206.100(A)(1) Permit Findings for All Manufacturing Districts), the review authority must find that the project is compatible with the purposes of the district in which it is located. There are ten purposes for MU-LI listed in BMC Section 23.206.080(A) District Purposes, including the two cited above. Research and Development (R &D) is defined as:

*“An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping,*

*or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.”*

### **Evidence:**

**Terminology.** Throughout the Zoning Ordinance (BMC Title 23), there are a mix of mandatory and discretionary terms used to differentiate between what is required and advisory<sup>4</sup>. Both of the purposes raised in the appeal are written as advisory and not required for every project, however, staff maintains that the proposed project is consistent with both of these district purposes.

**Research and Development.** MU-LI District Purpose (BMC Section 23.206.080(A)(2)): *Encourage* development of a mixed-use light industrial area for a range of compatible uses. Research and Development Use is classified in the Allowed Land Uses Table (BMC 23.206-1) as an Industrial and Heavy Commercial Use. By definition, Research and Development is comprised of a combination of uses that may include labs, offices, warehousing, and light manufacturing functions. Research and Development uses are present in a variety of industries – including bio-tech and areas of innovative – and encompass a wide range of related activities. The flexibility to create up to nine tenant spaces would allow for multiple Research and Development tenants that can adjust their tenant space size to meet their needs, including renting smaller spaces or expansions, as needed. Media Production is also classified as an Industrial and Heavy Commercial Use, and the proposed project would remain in the same category of the existing use. Therefore, Research and Development would be a compatible use within a mixed-use light-industrial area, the potential for a variety of tenant spaces increases the viability of a range of businesses, and the proposed project satisfies this district purpose.

**District Purpose.** MU-LI District Purpose (BMC Section 23.206.080(A)(4)): Encourage the creation and continuation of well-paid jobs which do not require advanced degrees. While this purpose primarily relates to traditional manufacturing jobs, as noted throughout the West Berkeley Plan, it also recognizes that uses such as Research and Development (referred to as “Advanced Services” in the plan) create technical positions that may require higher levels of education as well as clerical and service positions. The variety and flexibility of tenant spaces also creates more opportunity for clerical and support services. The proposed project would not displace a manufacturing use.

Findings shall consider the proposed land use and the structure or addition that accommodates the use.

### **Conclusion:**

Research and Development is classified as an Industrial and Heavy Commercial Use, encompasses a wide range of activities, and would be compatible with a range of uses that are allowed and located within the MU-LI District. The flexibility provided for additional tenant spaces would allow a variety of Research and Development tenants. The use would create technical positions that may require higher levels of education as well as clerical and

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<sup>4</sup> BMC Section 23.104.030(L) Mandatory and Discretionary Terms. The words "shall," "will," "must," and "is" are always mandatory. The words "may" and "should" are advisory and discretionary terms.

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service positions. The variety and flexibility of tenant spaces would create additional opportunities. The proposed project would not displace a manufacturing use.

As previously noted, the review authority must base their decision on the required findings in the Title 23 and must consider the proposed land use and the structure or addition that accommodates the use. They may not deny or approve a project based on speculation, unsubstantiated opinions, or the level of support or opposition of various parties regarding its potential economic or social impacts.

**Appeal Point #6:** Appellants believe that the proposed project does not abide by the West Berkeley Plan goals and policies for the protected arts uses and actively works in contradiction to those goals and policies. In particular, the appellants believe that Goal 7 (Economic Development) and West Berkeley Plan Appendices– Appendix B-Cultural Resources of West Berkeley, are not supported by the proposed project.

### **Background:**

The West Berkeley Plan<sup>5</sup> was adopted in 1993 and the Zoning Ordinance amendments to implement the plan were adopted in 1999. In 2011, Chapter 1 Land Use, Section 7 Land Use Regulations of the West Berkeley Plan – for Adoption in Principle of the plan was amended to reflect changes in permitted and prohibited uses and special situations and regulations. Major changes included: Research and Development was added to the MU-LI district's permitted uses tables, conversion to Arts/Crafts were allowed within protected industrial spaces, and conversion to Research and Development was allowed to be in Wholesale Trade and Warehouse protected spaces (all subject to the requirements and limitations in the zoning ordinance).

#### *1. Chapter 2 Economic Development<sup>6</sup>*

- a. Goal 7<sup>7</sup>: Protect small businesses, particularly arts and crafts businesses, so that they can flourish in West Berkeley.*
  - i. Policy 7a: Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a viable part of the West Berkeley community.*
- b. General Implementation Strategies, Ordinances, Regulation, and Policy Development – Arts and Crafts Review<sup>8</sup>:*
  - i. Review the functioning of the arts and crafts Ordinance, and develop recommendations about how it can be implemented.*
  - ii. Goal and Policies Implemented: Goal 7, Policy 7a*

### **Evidence:**

**Distinct Uses.** Media Production and Art/Craft Studio are two distinct uses. Appendix B-Cultural Resources of West Berkeley<sup>9</sup> of the plan identifies some of the studios and

<sup>5</sup> West Berkeley Plan: <https://berkeleyca.gov/your-government/our-work/adopted-plans/west-berkeley-plan>

<sup>6</sup> West Berkeley Plan, page 59-94

<sup>7</sup> West Berkeley Plan, page 87

<sup>8</sup> West Berkeley Plan, page 92

<sup>9</sup> West Berkeley Plan, page 221

worksites of artists and craftspeople, including the Kawneer Building, Nexus Institute, and Kala Institute. It goes on to state that, "in addition to art and craft studios, there is also film, video, and record production companies in West Berkeley, at the Fantasy Building."

**West Berkeley Plan Implementation.** The Zoning Ordinance was amended in 1999 to implement the West Berkeley Plan, and included provisions for protected use. Art/Craft Studio uses were included as protected uses provided they were legally established as of July 6, 1989 and were a stand-alone use or combined with residential use, same as the current code requirement. The existing use of the subject building was Media Production<sup>10</sup> at the time of West Berkeley Plan implementation in the Zoning Ordinance. Neither West Berkeley Plan Goal 7 and Policy 7a have been amended to include Media Production as a protected use, nor the criteria for Art/Craft Studios has changed in this plan.

**Subsequent Amendments.** The Subsequent amendments to the West Berkeley Plan in 2011 and corresponding zoning amendments did not alter the protected use criteria for Art/Craft Studios. They did address changes of use from manufacturing and industrial uses to other uses. These changes allowed protected spaces, including Warehouse, Wholesale Trade, Manufacturing, and Material Recovery Enterprises, to be converted to Arts/Craft Studio uses.

### **Conclusion:**

The appellant's argument in this point is based on the incorrect premise that the building is subject to the protections for Art/Craft Studio uses. As explained in Appeal Point # 1 and above, the existing use is Media Production and any current Art/Craft Studio uses would not meet the criteria for a protected nonindustrial use. The proposed project would not be counter to the goal, policy, or implementation strategy raised in the appeal.

## **VI. Recommendation**

Because the project is consistent with the Zoning Ordinance and General Plan, and would have minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board uphold the Zoning Officer decision and **APPROVE Administrative Use Permit #ZP2023-0081** pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1), and **DISMISS** the Appeal.

### **Attachments:**

1. Findings and Conditions, November 13, 2023
2. Project Plans, received March 9, 2023
3. Notice of Administrative Decision, dated November 13, 2023
4. Appeal Letter, received December 4, 2023
5. Notice of Public Hearing, dated April 11, 2024

**Staff Planner:** Nilu Karimzadegan, (510) 981-7430, [NKARIMZADEGAN@BERKELEYCA.GOV](mailto:NKARIMZADEGAN@BERKELEYCA.GOV)

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<sup>10</sup> Formerly called Radio, Television or Audio/Sound Recording and/or Broadcast Studios

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

### 2600 Tenth Street

#### Administrative Use Permit #ZP2023-0031

**To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.**

#### PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

#### CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

#### FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097<sup>1</sup>, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

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<sup>1</sup> [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:

(1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:

- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
- The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
- The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
- The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.

6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:

(a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and

(b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.

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**STANDARD CONDITIONS**

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The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, apply to this Permit:

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

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

**2. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

**3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

**4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

**5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Indemnification Agreement**

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

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

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

**10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone #

**11.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

**Standard Construction-related Conditions Applicable to all Projects:**

**12.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

**13.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**14.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

**15.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

**16.** All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

**17.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

**18.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

**19.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

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

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

**At All Times (Operation):**

24. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



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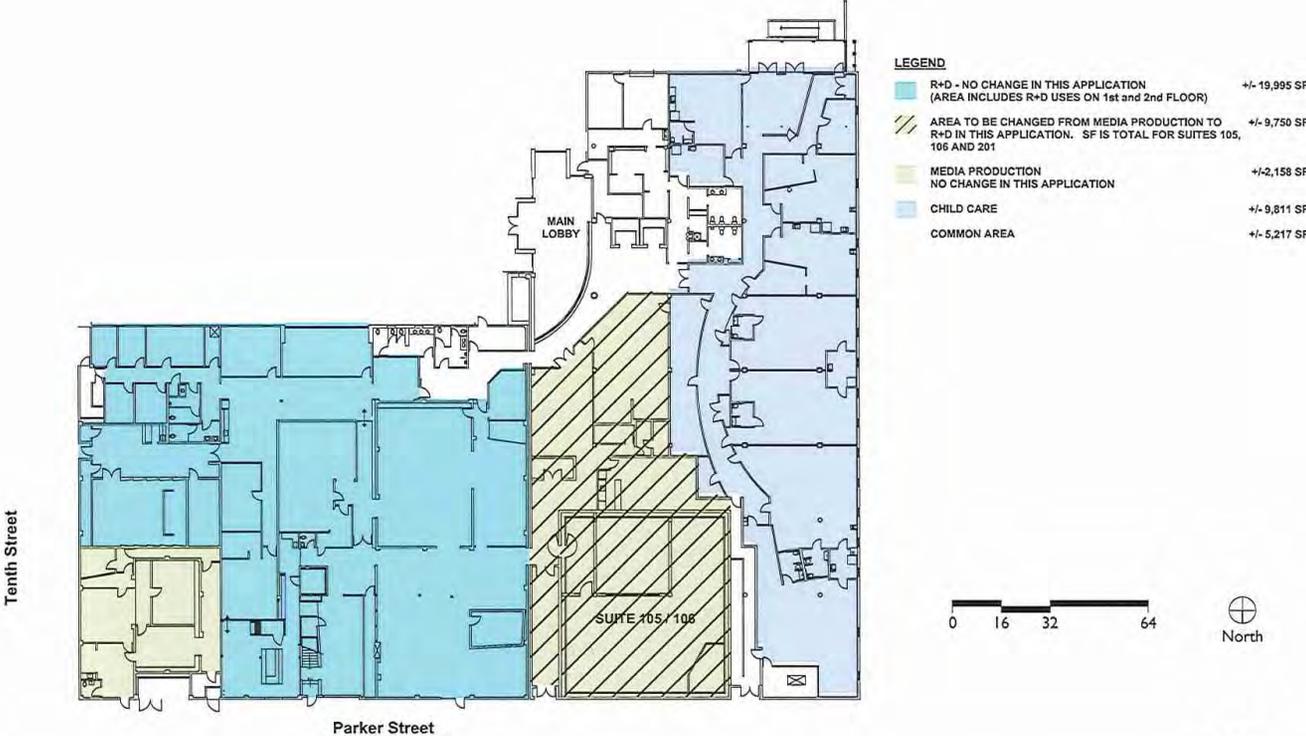
Prepared by: Nilu Karimzadegan  
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

1ST FLOOR  
USE CHANGE EXHIBIT

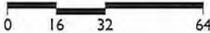
19 December 2022

SCALE: 1/32"=1'-0"



**LEGEND**

	R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
	AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
	MEDIA PRODUCTION NO CHANGE IN THIS APPLICATION	+/- 2,158 SF
	CHILD CARE	+/- 9,811 SF
	COMMON AREA	+/- 5,217 SF

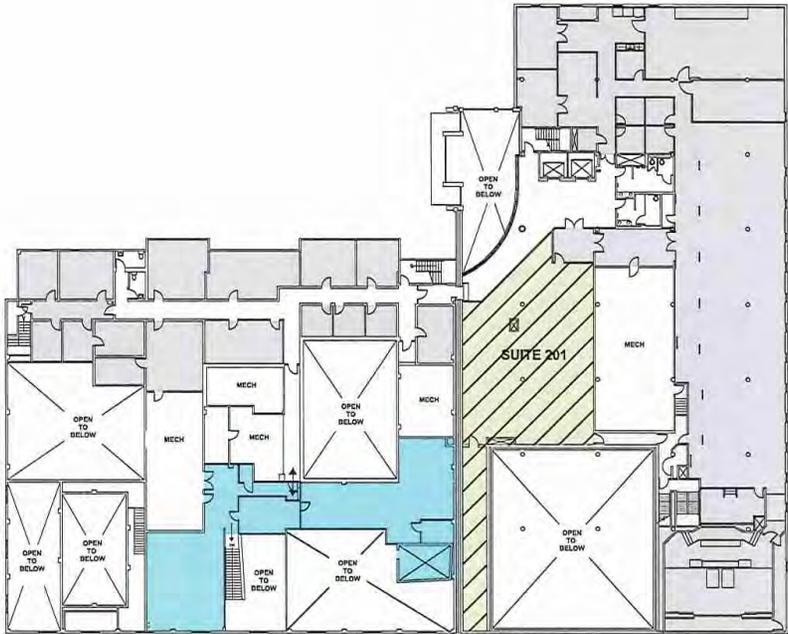


2600 TENTH STREET, BERKELEY CA

2ND FLOOR  
USE CHANGE EXHIBIT

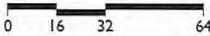
19 December 2022

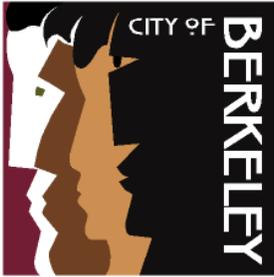
SCALE: 1/32"=1'-0"



**LEGEND**

	R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
	AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
	NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
	COMMON AREA	+/- 2,744 SF





# N O T I C E O F A D M I N I S T R A T I V E D E C I S I O N

## 2600 Tenth Street

### Administrative Use Permit #ZP2023-0031

**To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.**

**ZONING OFFICER DECISION:** The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

**DATE NOTICE IS ISSUED: November 13, 2023**

**APPEAL PERIOD:** November 14, 2023 to December 4, 2023

#### ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received March 9, 2023

#### FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Nilu Karimzadegan at (510) 981-7430 or [nkarimzadegan@berkeleyca.gov](mailto:nkarimzadegan@berkeleyca.gov).

#### PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.

1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420

E-mail: [planning@berkeleyca.gov](mailto:planning@berkeleyca.gov)

**TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):**

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
  - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
  - C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

### 2600 Tenth Street

#### Administrative Use Permit #ZP2023-0031

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#### CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

#### FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097<sup>1</sup>, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

<sup>1</sup> [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:

(1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:

- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
- The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
- The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
- The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.

6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:

(a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and

(b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.

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**STANDARD CONDITIONS**

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The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, apply to this Permit:

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

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

**2. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

**3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

**4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

**5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Indemnification Agreement**

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

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

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

**10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison**

\_\_\_\_\_

Name

\_\_\_\_\_

Phone #

**11.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

**Standard Construction-related Conditions Applicable to all Projects:**

**12.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

**13.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**14.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

**15.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

**16.** All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

**17.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

**18.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

**19.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

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

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.

23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

**At All Times (Operation):**

24. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.

26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.

27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



Prepared by: Nilu Karimzadegan  
For Samantha Updegrave, Zoning Officer



2600 TENTH STREET, BERKELEY CA

2ND FLOOR  
USE CHANGE EXHIBIT

19 December 2022

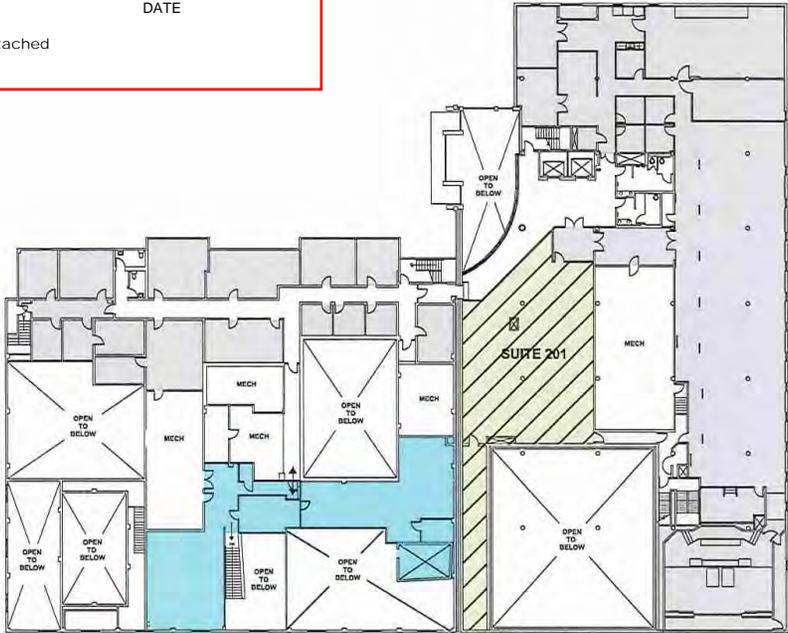
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PLANS APPROVED by

*Miguel Delgado* **November 9, 2023**

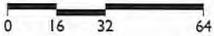
SIGNATURE DATE

\*AUP Findings and Conditions Attached



**LEGEND**

	R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
	AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
	NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
	COMMON AREA	+/- 2,744 SF





1.

To: The City of Berkeley Zoning Officer, City of Berkeley Planning Department:

From: Appellants of Administrative Use Permit #ZP2023-0031 –

- Rick Auerbach (for WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

### **Appeal of 2600 Tenth Street Administrative Use Permit #ZP2023-0031**

We, the Appellants of this Use Permit, contend that the conditions cited in Planning staff's November 13, 2023 Notice of Administrative Decision to approve Administrative Use Permit #ZP2023-0031 have not been met and therefore this Use Permit should not have been approved and should be rescinded. The reasons for our contention are:

- 1.) **Contrary to applicant's and staff's assertion that the spaces at issue are not subject to Zoning Ordinance Table 23.206-8, Section 23.206.050 C of the Berkeley Municipal Code - Protected Non-Industrial arts studio uses, we contend that they are covered under this provision. From the inception of the zoning Ordinance's Arts protections, "filmmakers", and later "video artist" were always included as one of the protected uses in this section of the BMC. It seems a classification calling them "Media Production" was implemented many years after protection was conferred upon them by Zoning Ordinance Table 23.206-8, Section 23.206.050 C. Contrary to staff's classification of these studio spaces as having been used as Media Production spaces, we contend that the previous use of these spaces by "filmmakers" and "video artists" confers "protected" status upon these spaces, meaning they can not be converted to a non-protected use without "equivalent space" being provided as required by BMC section 23.206.050 C. 4 (a).**

#### **A.) Berkeley Municipal Code evidence that the spaces are "Protected Non-Industrial Uses."**

**Section 23.206.050 C.** addresses and defines **Protected Non-Industrial Uses** in the MULI. **Table 23.206-8 in Section 23.206.050 C.** establishes 2 categories of Protected Non-Industrial Uses in MULI;

Category 1 - Art/Craft Studio, and

Category 2 – 4). Fine arts performance, instruction and rehearsal studios (dance, music, theater)

5). Theaters, stage performance, but excluding motion picture theaters

The definition of an Art/Craft Studio in Table 23.206-8 and the activities that take place there are found in BMC Chapter 23.502 GLOSSARY, 23.502.020, Defined terms:

**22. Art/Craft Studio:** "An establishment engaged in the creation of art or crafts that requires artistic skill.

Examples of individuals typically engaged in this work include...photographers/**filmmakers**,...**video artists**...and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition.

**23.206.050 - Protected Uses.,1. Protected Non-Industrial Uses Defined** further clarifies that "A use in the MU-LI...district listed in **Table 23.206-8** is classified as a protected non-industrial use, provided the use: (a) Was legally established as of July 6, 1989;

2.

Since the studios under discussion were "legally established as of July 6, 1989" and have been significantly and extensively used by "filmmakers" and "video artists", therefore these studios fall under BMC Section 23.206.050 C. - **Protected Non-Industrial Uses in the MULI**, and therefore **can not be converted to a non-protected use** without triggering the replacement requirement found in the C.4 (a) Findings provision of **23.206.050 C. 2. Permit Required for Change of Use:**

"To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category."

**B. Description by Applicant and City Planning Staff in Planning Staff reports of "recording and mixing studios" ...and "screening rooms" as "Protected Uses":**

On the 2600 Tenth St website it stated: According to the Center's own website, the Center "provide(s) services for the **music, film, video**...communities. We are available for **film, video**...and special events." According to Berkeleyside, since Wareham's purchase, "The Fantasy Building has been used since then by independent **filmmakers**..."

The applicant (Wareham Development) and City staff, in 2008 in three instances within two separate COB Planning staff reports have declared "recording and mixing studios" ...and "screening rooms" in 2600 Tenth St to be "protected uses" in the MULI district." These are the exact same uses staff now describes as non-protected "industrial" uses. Nothing has changed in the BMC since 2008 that would support planning staff's present redetermination in Use Permit #ZP2023-0031 that such spaces were not occupied by "protected uses" and are now "Media Production."

From FEBRUARY 14, 2008 Staff Report - 2600 Tenth Street Variance Request #07-10000132 to operate a child care center for children of Pixar employees: : Attachment 1-Findings and Conditions - VARIANCE FINDINGS:" "D. The facility houses over 40 different businesses and organizations that contribute to an interactive arts community. To support the operation's long term success, over the years the owner's (Wareham) have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, **which are "protected uses" in the MULI district.**"

GENERAL NON-DETRIMENT FINDING F. "The applicant could theoretically choose to convert existing recording studios or screening rooms to a child care center (a "protected use") with an administrative use permit because the MULI District **allows the conversion of one protected use to another** by the granting of an administrative use permit."

ZONING ADJUSTMENTS BOARD Staff Report - FOR BOARD ACTION FEBRUARY 14, 2008 2600 Tenth Street Variance #07-10000132

"Finally, the MULI District allows the conversion of one protected use to another by the granting of an administrative use permit. However, the conversion of such space would be contrary to the applicant's goal of retaining the **existing protected uses**, and therefore, the applicant requests a Variance to convert space that has been used as offices and storage to the proposed child care center."

3.

In addition, the City of Berkeley has given numerous Use Permits for “film” uses in the exact kind of spaces that City staff and Wareham claim are “Media Production.” Some examples of this are permits given to:

Frame X for “Video Post Production”

KuKu Studios for “Video Production”

PictureStartEdit permit for “Film/video”

Pizzicato Productions Documentary Film Production for “continuing legal use.”

IMDSRV Zoning Certificate for “Post Production Sound Services” for film

### 3. FINDINGS FOR APPROVAL of Administrative Use Permit #ZP2023-0031

Planning staff states that: “As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the...general welfare of the persons...working in the neighborhood of such proposed use...or to the general welfare of the City...:

The appellants contend that the proposed project will be detrimental to those working in the neighborhood (in 2600 Tenth St) and to the general welfare of the City because:

- 1.) The storied documentary filmmakers, video artists and sound engineers working on film and video at 2600 Tenth St. are a long-standing and interconnected community where there is significant cross-pollination between the different artists. The conversion of this arts studio space to R&D removes space that has previously been used by artists and thus diminishes the opportunities for robust collaboration between artists, limiting their output, economic opportunities, and cultural and economic contributions to the “general welfare of the City.” Maintaining the spaces at issue as art spaces helps to keep the existing community of artists intact, bettering their opportunities for productive collaboration and economic success.

#### Appeal point 4

The Zoning Officer states that:

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A) than leaving the space intact because:

“Both the existing Media Production and proposed Research and Development uses are classified as “Industrial and Heavy Commercial Uses” so there is no change in the industrial nature of activities that can occur onsite”

“Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space...”

4.

The 2600 Tenth Street Administrative Use Permit #ZP2023-0031 states that, “as required by BMC Section 23.206.100 (A), “the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2)... (and) (3) Complies with the adopted West Berkeley Plan;

1

**The Appellants contend that the proposed Change of Use does not better serve the purposes of the district because:**

- 1.) The previous use of the spaces – as Staff makes clear in their 2008 Staff Reports that the spaces at issue were - and are - not “Industrial and Heavy Commercial Uses”, but Arts Uses clearly spelled out in BMC section Zoning Ordinance Table **23.206.050 C. 4 (a)**.
- 2.) The proposed R&D use is not consistent with “relevant policies set forth in the adopted West Berkeley Plan.”
- 3.) The proposed change of use is not (1) “consistent with the purposes of the District;”

**The Appellants contend that the proposed Change of Use is not “consistent with the purposes of the District;” as found in 23.206.080 MU-LI Mixed Use-Light Industrial District, because:**

The # 4 Purpose of the MULI District is to:

4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;

The West Berkeley Plan is clear that the majority of jobs in Research & Development require “advanced degrees” while there is no requirement for a degree to work in film and many who work as filmmakers, video, and sound artists are self-taught or have apprenticed or interned with others in order to learn their skills. Converting space that provides for “well-paid jobs which do not require advanced degrees” to space for those requiring advanced degrees is diametrically opposed to the MULI’s #4 Purpose.

The # 2 Purpose of the MULI District is to:

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

Since there are multiple millions of square feet available for R&D in the MULI District while there is likely only a few tens of thousands of square feet available for filmmakers, video artists, and sound artists, it is clear that any loss or conversion of this precious space would limit the “range” of compatible uses by further minimizing the film arts uses in the MULI.

#### Appeal point 5

**The Appellants contend that the proposed Change of Use does not does not comply with the adopted West Berkeley Plan because:**

The West Berkeley Plan clearly seeks to support arts and crafts enterprises, employment, and culture. The various Goals, Policies, and statements supporting the arts that are found in the Plan are cited below. WEBAIC believe that Use Permit #ZP2019-0090 not only does not abide by Plan Goals and Policies on protected arts uses, but violates and actively works in contradiction to these Goals and Policies:

5.

The **Economic Development Chapter (2)** of the West Berkeley Plan provides direct guidance on the issue of Arts and Crafts and their protections. The most critical and applicable provision of the West Berkeley Plan as it relates to this issue is found in:

**Economic Development - Goals and Policies - Goal 7:** "Protect small businesses, particularly arts and crafts businesses, so they can continue to flourish in West Berkeley."

**"Rationale:** Small businesses, especially arts and crafts businesses, are key in creating the unique character of West Berkeley. The City has developed Arts and Crafts zoning to protect these businesses. However, the zoning has not always worked as intended. It is vital to assure that arts and crafts enterprises are genuinely protected from displacement."

**5. Policy:** A. Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a vital part of the West Berkeley community.

**WEBAIC Comment:** Administrative Use Permit #ZP2023-0031 violates Goal 7's commitment to "protect arts and crafts...businesses...from displacement." It additionally violates Goal 7's Policy to "use zoning... to assure that artists and craftspeople remain a vital part of the West Berkeley community." In contradiction to the above WB Plan Goals and Policies, **AUP #ZP2023-0031 as constituted is a mechanism to displace arts and crafts enterprises and assures that artists (particularly endangered film and sound artists) do not "remain a vital part of the West Berkeley community"**.

**Economic Development (Chapter 2), A. Strategies for Business Retention VII. Implementation Measures,** states:

**2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance.** Goals and Policies Implemented: Goal 7, Policy 7A - Responsibility: City Planning Department, in consultation with affected parties. Funding: Regular staff funding

**Economic Development III. The Economic Future of West Berkeley - Economic Prospects by Sector:** "One of Berkeley's economic roles as a city--with a strong contribution from West Berkeley firms--is as a reservoir of ... artistic talent for the East Bay, the Bay Area, and... an even larger area."

Under The West Berkeley Plan's Economic Development section, **VII. Implementation Measures - Priority Implementation Activities, A. Ordinances, Regulation and Policy Development,** is

**West Berkeley Plan Appendices - Appendix B - Cultural Resources of West Berkeley**

5. "West Berkeley is an important locale for artists and craftspeople..." The strong community of artists and craftspeople which exists in West Berkeley is clearly such a resource." "In addition to being a locale where culture is enjoyed, it is also one where cultural products are created and produced."

The West Berkeley Plan's overriding goal is to retain the area's dynamic "economic mix" of uses. To accomplish this the West Berkeley Plan specifically called out R&D as a use that could displace Arts & Crafts because it is "supported by the market" while Arts & Crafts uses are NOT "supported by the market" and therefore require special zoning support (Arts/Crafts protections) to assure they "remain part of the mix."

6.

6.

**4.) (a) West Berkeley Plan Policies & statements regarding R&D being “supported by the market:**

**I. Economic Rationale of the Plan:** The City’s economic policy must ...strike a balance between working within market... realities on the one hand, and guiding and regulating economic actors to achieve City goals on the other. ...a policy which passively followed dominant market forces would not necessarily achieve City economic goals (and would not require a Plan). Market forces...strongly support the development of advanced services (e.g. research laboratories).” “While support for advanced services (research laboratories) ...is also important, these sectors are generally supported, rather than threatened, by market developments. Thus, the policy structure for these sectors should be different.”

**In their application, the applicant states that**

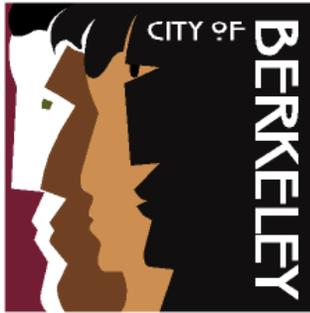
3.) An abundance of existing and potential Research & Development space (millions of sq ft) exist in West Berkeley, thus this 20,000 sq ft does not need to be converted to R&D. What IS NEEDED in West Berkeley is the preservation of rare and in-demand studio space for film and sound artists:

In 2012 ,WEBAIC - in negotiations with City staff and councilmembers - agreed to allow 270,000 sq ft of industrially-protected warehouse space to be converted to Research and Development. The square footage limitation of such conversions sun-setted in 2016, allowing the millions of square feet of existing warehouse space to be opened to Research and Development uses, eliminating any need for this 20,000 sq ft to be converted. Additionally, Planning staff – with WEBAIC input - recently updated the definition of R&D which more easily allows this use to occupy West Berkeley’s millions of sq ft of warehouse space previously off-limits to R&D.

The applicant – Wareham Development \_ currently has close to one million square feet of space in Berkeley devoted to R&D and Life Sciences. They also have approximately four million square feet of mostly R&D and bioscience in the near East Bay.

Contrasting Wareham Development’s millions of square feet available for R&D to the very, very small amount (20-50 thousand?) of square feet of space in 2600 Tenth St that is available to artists making film, video, and sound, it is clear which use desperately requires space more to remain viable and which use doesn’t. Staff states in its required “Findings” that “additional Research and Development space, (will) maintain(ing) the existing character of the area.” The conversion of this unique film, video, and sound art space to R&D will absolutely NOT “maintain the existing character of the area.”

It will further displace an extremely unique world renown film arts community – one of, if not the, largest concentration of documentary filmmakers who have been nominated for and won numerous Academy Awards, Peabody Awards, Sundance Awards, and many, many “Best” awards at film festivals world-wide. There are millions of square feet available for R&D – at present a one million sq ft project at Aquatic Park ready for R&D leasing and another project with hundreds of thousands of square feet for R&D between 4<sup>th</sup> and 5<sup>th</sup> St, a few Blocks away from 2600 Tenth St. The conversion of this space and the other Arts space in the Fantasy building that Wareham has clearly stated it intends to convert as soon as it can will irreparably harm the “existing character of the area” that is now known as a nation center for film, video, and sound production.



# Z O N I N G A D J U S T M E N T S B O A R D

## NOTICE OF PUBLIC HEARING

### 2600 Tenth Street

**Appeal of the Zoning Officer decision to approve the Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to a Research and Development resulting in a total of 29,745 square feet of Research and Development space, and create up to nine tenant spaces within a seven-story building on a 114,998 square-foot lot.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

**When:** Thursday, April 25, 2024, 7:00 pm

**Where:** Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.***

*For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.*

*Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.*

#### **A. Land Use Designations:**

- General Plan: General Plan: M - Manufacturing
- Zoning: Zoning: MU-LI - Mixed-Use Light Industrial District

**B. Zoning Permits Required:**

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

**C. CEQA Recommendation:** Categorically exempt pursuant to Section 153301 of the CEQA Guidelines (“Existing Facilities”).

**D. Parties Involved:**

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellant Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

**Further Information:**

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7430 or [NKarimzadegan@berkeleyca.gov](mailto:NKarimzadegan@berkeleyca.gov).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov).

**Communication Disclaimer:**

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**Written Comments, Communications, and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

**Notice Concerning Your Legal Rights:**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
  - a. That this belief is a basis of your appeal.
  - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

### A Partial List of Present and Past Fantasy Building Artist/Filmmaker Tenants

Fantasy filmmakers are at the core of documentary film production in the East Bay. They provide a hub for a broader creative community of editors, cinematographers, writers, graphic artists, composers and more who may not work out of the Fantasy Building but whose careers depend, in some cases, on productions that come out of it.

#### FILMMAKERS – Academy Award Winning & National Emmy Nominated

**Tom Christopher** – Academy Award & Emmy Nominee - *Facing Fear*

**Jim Capobianco** - Academy Award Nominee  
*Ratatouille* - Screenplay  
*Mary Poppins*. - Visual Effects

**Jason Cohen** – Academy Award Nominee, Director's Guild of America Director's Award  
*Facing Fear* – PBS, CNN

**Alex D. da Silva** –Producer/Cinematographer/Director. Supervised and managed production and post of more than 50 Feature Films including Oscar Nominated projects.  
*Mary Poppins Returns* – Disney, PBS.

**Connie Field** - Director/Producer, Member of the Academy of Motion Pictures & Arts  
*Have You Heard from Johannesburg*, A seven-part documentary series. Prime Time Emmy for Exceptional Merit in Documentary  
*Freedom On My Mind*, Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival; *The American Experience*, PBS  
*The Life and Times of Rosie the Riveter*, *The American Experience*, PBS, Academy Award Nominee

**Rick Goldsmith** – Director/Producer, Member of the Academy of Motion Pictures & Arts  
*The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers*, co- directed with Judith Ehrlich - Academy Award nominee  
*Tell the Truth and Run: George Seldes and the American Press* - Academy Award nominee

**Maureen Gosling** – Director/Producer/Editor, Member of the Academy of Motion Pictures & Arts  
*Burden of Dreams* – director Les Blank, British Academy Award for Best Documentary

**Bill Jersey** – Director/Producer/Executive Producer  
*The Rise and Fall of Jim Crow* – Emmy Nominee, Peabody Award Winner  
*A Time for Burning* – Academy Award Nominee, National Film Registry

**Vivian Kleiman** – Director/Producer/Writer - Peabody Award, Academy Award & Emmy Nominee  
*Color Adjustment* – with Marlon Riggs

**Jim Lebrecht** – Sound Design/ Re-Recording Engineer, Member of the Academy of Motion Pictures & Arts  
*Crip Camp* - Academy Award Nominee, Peabody Award, International Documentary Association/Independent Spirit – Best Documentary; Sundance Film Festival

RECEIVED  
 APR 25 2024  
 LAND USE PLANNING

**Judith Montell** – Director

*Forever Activists*, Academy Award nominee

**Stanley Moore** – Emmy Awards – Best Director, Cinematography Warner Bros, Magic Johnson Foundation

**Marilyn Mulford** – Director/Producer

*Freedom on My Mind* - Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival; *The American Experience*, PBS

*The Life and Times of Rosie the Riveter*, *The American Experience*, PBS, Academy Award Nominee

**Stanley Nelson** – Director/Producer

*Freedom Riders* – 3 Prime Time Emmys

*The Black Panthers: Vanguard of the Revolution* – Emmy Nominee

**Steven Okazaki** – Director/Producer, Academy Award Winner (4 nominations), Emmy, Peabody Award Winning Filmmaker. AMPAS ?

*Days of Waiting: The Life & Art of Estelle Ishigo*

**Jed Riffe** – Director/Producer

*Ishi, The Last Yahi* – National Emmy nominee

**Justine Shapiro** – Producer/Director, Promises Films

*Promises* - nominated for an Academy Award, won 2 Emmys including "Best Doc"

**Ray Telles** – Director/Producer

*Dogtown Redemption* – Emmy Nominee

**Alex Woo** – Emmy Nominee, Golden Globes, WGA, NAACP Image Award. HBO Executive Producer, Screenwriter – *The Immortal Life of Henrietta Lacks*

**Frank Zamacona** – 5 Emmy, 3 Clio, & 1 Cine Golden Eagle Award Winning Director and Producer.

#### **POSTPRODUCTION SOUND**

Berkeley Sound/IMRSV has worked on hundreds of films, some very high profile. Our studios on the 3rd floor are critical to our ability to work and to generate a lot of taxable income for the city of Berkeley.

#### **FILM FESTIVALS:**

Telluride Film Festival – Tom Luddy, Gary Meyer  
Jewish Film Festival

#### **FILM DISTRIBUTORS:**

Berkeley Media, Dan Bickley

**AWARD-WINNING FILMMAKERS**

**Kim B Christensen** - Sound Designer/Re-recording Engineer - Francis Ford Coppola, Skywalker Sound, Pixar

**Connie Field** - Director/Producer

Feature Length:

2024 - *Democracy Noir*

*The Whistleblower of My Lai*, KPBS

*Oliver Tambo*, Paff Best Documentary, PAFF Directors Award.

*Al Helm: Martin Luther King In Palestine*, Audience Award at the Mill Valley Festival

*Have You Heard from Johannesburg*, A seven-part documentary series. Prime Time Emmy for Exceptional Merit in Documentary

*Salud*, Audience Award PAFF.

*Freedom On My Mind*, Academy Award Nominee; Grand Jury Prize, Best Documentary, Sundance Film Festival. Broadcast: *The American Experience*, PBS.

*Forever Activists*, Academy Award Nominee.

*The Life and Times of Rosie the Riveter*, *The American Experience*, PBS.

Short:

*Our Stolen Futures*

**Rick Goldsmith** – Director/Producer

Feature Length:

2024 *Stripped for Parts: American Journalism on the Brink*.

*Tell the Truth and Run: George Seldes and the American Press* - Academy award nominee

*Everyday Heroes*, co-directed with Abby Ginzberg.

*The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers*, co- Directed with Judith Ehrlich - Academy Award nominee

*Mind/game: The Unquiet Journey of Chamique Holdsclaw*

**Maureen Gosling** – Director/Producer/Editor

Feature Length

2023 *The 9 Lives of Barbara Dane* – producer Jed Riffe

*This Ain't No Mouse Music! The Story of Chris Strachwitz and Arhoolie Records* – with Chris Simon

*Blossoms Of Fire*

Shorts:

2023 *Bamako Chic: Threads of Power, Color and Culture* – with Maxine Downs PhD

*Out In the Woods*

*Sketches Of Juchitán 1992*

Music Videos with Los Cenzontles:

*Good Morning, Atzlan*

*Los hermanos*

*Soy Mexico-Americano*

*Lo siento mi vida*

Editor*5 Variations On A Long String* – director Peter Esmonde*I Hear What You See* – director Chris Simon*Poetry Inside Out* – director Joyce Lee*One Voice* – director Spencer Wilkinson

2.

**Tim Hahn** – Executive Producer**Ashley James** – Director/Producer/Cinematographer*Bomba, Dancing the Drum* – editor Maureen Gosling**Bill Jersey** – Director/Producer/Executive Producer*Eames: The Architect & The Painter**The Rise and Fall of Jim Crow* – Emmy Nominee, Peabody Award Winner*A Time for Burning* – Academy Award Nominee, National Film Registry**Kevin Johnson** - DirectorCurrent unreleased, a series of three shorts: *Black Wall Street: Stories of Greenwood***Nancy Kates** – Producer/Director*Regarding Susan Sontag**Brother Outsider: the Life of Bayard Rustin* mixed by Jim LeBrecht. (PBS POV),**Vivian Kleiman** – Director/Producer/Writer - Peabody Award, Academy & Emmy Nominated*Color Adjustment* – with Marlon Riggs*Forgotten Fires* - PBS, POV*No Straight Lines***Jim Lebrecht** – Sound Design and Re-Recording Engineer*Crip Camp* - Academy Award Nominated Filmmaker, Peabody Award

International Documentary Association/Independent Spirit – Best Documentary

**Judith Montell** – Director*Forever Activists*, Academy Award nominee*In the Image* with Emmy Scharlatt, editor Ken Schneider**Stanley Moore** – Emmy Awards – Best Director, Cinematography Warner Bros, Magic Johnson

Foundation

**Stephen Most** – Producer/Writer*Life Beyond Earth* co-producer, an internationally distributed PBS science series. These include*Our Summer in Tehran* – director Justine Shapiro*Promises* - director Justine Shapiro*Time for Justice* – director Abby Ginzberg**Marilyn Mulford** – Director/Producer*Freedom on My Mind* - Academy Award Nominee; Grand Jury Prize, Best Documentary, SundanceFilm Festival; *The American Experience*, PBS*Archaeology of Memory: Villa Grimaldi*

*Chicano Park*. Gold Award at the Chicago International FF

**Stanley Nelson** – Director/Producer

*Freedom Riders* – 3 Prime Time Emmys

*The Black Panthers: Vanguard of the Revolution* – Emmy Nominee

*Freedom Summer*

**Steven Okazaki** – Director/Producer, Academy Award Winner (4 nominations), Emmy, Peabody Award

*Days of Waiting: The Life & Art of Estelle Ishigo*

**Jed Riffe** –

Director/Producer

*Ishi, The Last Yahi* – National Emmy nominee

*Who Owns the Past?*

*Waiting To Inhale: Marijuana, Medicine, And the Law* – editor, Maureen Gosling

*California And the American Dream Series*

*California's "Lost" Tribes* - editor, Maureen Gosling

Producer

*From Here/From There*

*Pleistocene Park* - editor, Maureen Gosling

*Ripe For Change*

*The Long Shadow* - editor, Maureen Gosling

*A Dangerous Idea: Eugenics, Genetics and the American Dream* - editor, Maureen Gosling

*The 9 Lives of Barbara Dane* – director, Maureen Gosling

Executive Producer

*Smokin' Fish* - editor, Maureen Gosling

*A New Color* - editor, Maureen Gosling

Co-Producer/Post-Producer

*Andre, The Voice of Wine*

*Is Your Story Making You Sick?*

*One Voice* - editor, Maureen Gosling

*The Final Fight*

Interactive Producer

*California, A Place and A Dream*

*TV Of Tomorrow*

*Africana Studies Center*

*Autry Museum*

**Ken Schneider** – Editor

*Ralph Ellison: An American Story* - director Avon Kirkland - American Masters, Sundance

*Beyond the Opposite Sex* - director Emily Abt - Showtime Channel

*In Football We Trust* - director Erika Cohn - Independent Lens, Emmy winner

**Justine Shapiro** – Producer/Director, Promises Films

Feature Length

*Our Summer in Tehran*

*Promises* - nominated for an Academy Award, won 2 Emmys including "Best Doc"

*Bajo California, El Limite Del Tiempo* - director Carlos Bolado, won 7 Ariels (the Mexican Oscar)

Fundraising Videos

*Chez Panisse Foundation: Edible Schoolyard*

**Alan Snitow and Deborah Kaufman**

Feature Length

*Blacks and Jews*

*Secrets of Silicon Valley*

*Thirst*

*Between Two Worlds*

*Oil and Water: The San Francisco Mime Troupe*

*Company Town*

*Town Destroyer*

Shorts/poetry films:

*Poetry on Water*

*Drones in My Backyard*

*Ezekiel's Wheels*

*Poetry by Wanda Coleman and Adam Zagajewski*

**Ray Telles – Director/Producer**

*The Fight in the Fields, Cesar Chavez and the Farmworkers Movement* – with Ray Telles,  
Grand Jury Prize, Sundance Film Festival

*Race Is the Place*

*Dogtown Redemption* – Emmy Nominee

**Rick Tejada-Flores –**

Producer/Director

*Si Se Puede!*

*Bonnie and Leroy, An Alternative to Watergate*

*Low 'N Slow, the Art of Lowriding*

*Elvia, the Fight for Land and Liberty*

*Rivera In America*

*Caminante* (2 episodes)

*Jasper Johns, Ideas in Paint*

*The Fight in the Fields, Cesar Chavez and the Farmworkers Movement* – with Ray Telles,  
Grand Jury Prize, Sundance Film Festival

*The Good War and Those Who Refused to Fight It* – with Judith Erlich

*Race is the Place*

*Orozco, Man of Fire* – with Laurie Coyle

*My Bolivia, Remembering What I Never Knew*

*Water for Life*

Editor

*Trimpin, the Sound of Invention* – director Peter Esmonde

*Will the Real Terrorist Please Stand Up*

*In the Image, Palestinian Women Capture the Occupation* – directors Judith Montell, Emmy Scharlett  
*Adios Amor* - director Laurie Coyle

**John D White** – Filmmaker

**David A Wolf** – Filmmaker/Camera

*The Maze Runner*  
*Terminator Genesis*  
*The Blues Brothers*  
*Focus*

**Alex Woo** – Nominated: Emmy, Golden Globes, WGA, NAACP Image Award. HBO Executive producer, Screenwriter – *The Immortal Life of Henrietta Lacks*

**Frank Zamacona** – 5 Emmy, 3 Clio, & 1 Cine Golden Eagle Award Winning Director and Producer.

**Denise Zmekkol** – Director/Producer

*Children of the Amazon*  
*Skin of Glass*

#### DRAMATIC FEATURES

**Saul Zaentz, Producer**

*Amadeus* – 8 Oscars  
*One Flew Over the Cuckoo's Nest* – 5 Oscars  
*The English Patient* – 9 Oscars  
*The Mosquito Coast*  
*Goya's Ghost*  
*At Play in the Fields of the Lord*  
*The Lord of the Rings* – 1 Oscar – grossed \$30 million worldwide  
*Three Warriors*

**Carroll Ballard, Director**

*Black Stallion*

#### POST-PRODUCTION

**David Lynch**

**Peter Weir**

**John Waters**

**Gus Van Sant**

**Terry Zwigoff** - *Crumb* and *Bad Santa*

**Walter Murch** - Academy Award Winning Editor

**Mark Berger** – Academy Award Winning Sound Engineer

**Alan Splet** - Award winning sound designer

ITEM #: \_\_\_\_\_ ZAB DATE: \_\_\_\_\_

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 10th St.  
(Project Address)

NAME Gregory Scharpen  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION \_\_\_\_\_  
(Optional)

RESIDENT  BUSINESS OWNER \_\_\_\_\_  
OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 847-9414 DATE 25 Apr '24  
(In case we would like to contact you)

ITEM #: 2600 10th St ZAB DATE: 4/25/2024

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 10th St  
(Project Address)

NAME Georgia Shea  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION   
(Optional)

RESIDENT  BUSINESS OWNER \_\_\_\_\_  
OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510 837-8438 DATE 4/25/2024  
(In case we would like to contact you)

ITEM #: 5 ZAB DATE: 4-25-24  
2600 Tenth

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC \_\_\_\_\_  
(Project Address)

NAME Frank Zamacora  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION   
(Optional)

RESIDENT \_\_\_\_\_ BUSINESS OWNER   
OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510-704-4001 DATE 4/25/2024  
(In case we would like to contact you)

ITEM #: 4 ZAB DATE: 4/25/2024

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2600 Tenth St.  
(Project Address)

NAME John Curl  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION \_\_\_\_\_  
(Optional)

RESIDENT  BUSINESS OWNER \_\_\_\_\_  
OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510 847-3431 DATE 4/25/2024  
(In case we would like to contact you)

ITEM #: \_\_\_\_\_ ZAB DATE: \_\_\_\_\_

2600 Tenth CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC #4 WB- Appeal 2 2023-0031  
(Project Address)

NAME Betsy Morris -  
(Please Print- to be sure we spell your name correctly)

SUPPORT  OPPOSITION   
(Optional)

RESIDENT  BUSINESS OWNER

OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510-809-7252 DATE 4/25/24  
(In case we would like to contact you)

ITEM #: 2600 Tenth St ZAB DATE: \_\_\_\_\_

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC Fantasy Building  
(Project Address)

NAME STEPHEN MOST  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION \_\_\_\_\_  
(Optional)

RESIDENT  BUSINESS OWNER

OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510 295-3057 DATE 4/25/24  
(In case we would like to contact you)

**Public Testimony Guidelines:**

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. The Board Chairperson may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, please submit a speaker card to Planning Staff as early as possible at the meeting.

At the start of the meeting the Board may rearrange the agenda or place additional agenda items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.

ITEM #: 2600 Tenth ZAB DATE: 4-25-24

CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD  
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC Fantasy Building  
(Project Address)

NAME Claire Schoen  
(Please Print- to be sure we spell your name correctly)

SUPPORT \_\_\_\_\_ OPPOSITION \_\_\_\_\_  
(Optional)

RESIDENT  BUSINESS OWNER

OTHER \_\_\_\_\_

SIGNATURE: [Signature]

PHONE 510-882-6164 DATE 4/25/2024  
(In case we would like to contact you)



3457 Arlington Avenue, Ste. 104  
Riverside, California 92506  
951-779-0787 (V)  
[www.QuickCaption.com](http://www.QuickCaption.com)

>> NILU KARIMZADEGAN: THE PROJECT BEFORE YOU IS AT 2600 TENTH STREET.

THIS IS AN APPEAL OF THE ZONING OFFICER'S DECISION TO APPROVE AN ADMINISTRATIVE USE PERMIT, ZP 2023-0031, TO CHANGE THE USE OF THREE TENANT SPACES, TOTAL OF 9,750 SQUARE FEET, FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT RESULTING IN A TOTAL OF 29,745 SQUARE FEET OF RESEARCH AND DEVELOPMENT SPACE IN A SEVEN-STORY BUILDING.

ZONING PERMITS REQUIRED ADMINISTRATIVE USE PERMIT PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23.206.020.

AND A.U.P. TO CONSTRUCT NINE SPACES. THE PROJECT IS LOCATED, IT'S TAKING OVER A WHOLE BLOCK THAT IS LOCATED BETWEEN PARKER AND CARLETON STREETS AND NINTH AND TENTH STREETS.

IT'S LOCATED WITHIN THE MIXED USE LIGHT INDUSTRIAL DISTRICT OR ALSO KNOWN A MU-LI.

AS YOU CAN SEE IN THE FLOOR PLAN, THE PROPOSED AREA ATTACHED AND ON THE FIRST FLOOR IT INCLUDES UNITS 105 AND 106.

AND THE SECOND FLOOR IT INCLUDES UNIT 2Z 01.

THE BLUE AREA IS PREVIOUSLY CONVERTED TO RESEARCH AND DEVELOPMENT ON, UNDER A ZONING CERTIFICATE WHICH IS OVER A BY-RIGHT TYPE OF PERMIT.

I'M GOING TO PROVIDE SOME BACKGROUND ON THE HISTORY OF THE A.U.P. AND THE APPEAL LETTER POINTS.

ZONING OFFICER DECISION TO APPROVE THE A.U.P. WAS BASED ON ANALYSIS AND DETERMINATION THAT THE PROPOSED CHANGE USE FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT CONFORMS TO THE APPLICABLE PROVISIONS IN THE ZONING ORDINANCE, AND THE PROPOSED RESEARCH AND DEVELOPMENT USE IS CONSISTENT WITH THE PURPOSE OF THE DISTRICT, COMPLIES WITH THE WEST BERKELEY PLAN AND IS COMPATIBLE WITH THE SURROUNDING DEVELOPMENT.

WE RECEIVED AN APPEAL LETTER IN DECEMBER 2023.

THAT INCLUDED SIX POINTS.

THOSE POINTS ARE THE FOLLOWING:

ONE, THE EXISTING USE IS ARTS/CRAFTS STUDIO WHICH IS A PROTECTED NON-INDUSTRIAL USE.

TWO, A PREVIOUS STAFF REPORT HAS CALLED THE EXISTING MEDIA PRODUCTION USE A PROTECTED USE.

THREE, THIS CHANGE OF USE WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THOSE WORKING AT 2600 TENTH STREET.

FOUR, THE CHANGE OF USE DOES NOT BETTER SERVE THE PURPOSES OF THE DISTRICT.

FIVE, THE CHANGE OF USE IS NOT CONSISTENT WITH TWO OF THE MU-LI DISTRICT PURPOSES AND SIX, THE PROPOSED PROJECT DOESN'T ABIDE BY THE WEST BERKELEY PLAN FOR THE PROTECTED ART USERS.

I HAVE PROVIDED DEFINITION FOR MEDIA PRODUCTION AND ARTS/CRAFTS STUDIO AND PROTECTED USES HERE.

IT'S LONG AND WORDY, I WON'T REPEAT IT UNLESS SOMEONE WANTS ME TO REPEAT IT.

HOWEVER, THE SUMMARY OF THESE DEFINITIONS AND HOW THEY ARE DIFFERENT IS THAT ARTS AND CRAFTS STUDIO IS COMMONLY DIFFERENTIATED FROM MEDIA PRODUCTION BY SCALE AND PURPOSES OF THE ESTABLISHMENT UNDERSTOOD TO ENCOMPASS STUDIO SPACES FOR ART PRODUCTION AND PERFORMING ART INSTRUCTIONS, REHEARSAL STUDIOS, THEATER SPACES, MEDIA PRODUCTION USED BY CONTRAST ARE COMMERCIAL ARTS AND CRAFT, ARTS RELATED BUSINESS SERVICES INVOLVING VARIOUS MEDIA TYPES.

THE POINT ABOUT THE PROTECTED USES I WANT TO HIGHLIGHT HERE IS ARTS AND CRAFTS STUDIOS CLASSIFIEDS A PROTECTED NON-INDUSTRIAL USE IN THIS DISTRICT ONLY IF IT WAS LEGALLY ESTABLISHED AS OF JULY 6, 1989 AND IT EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT.

I HAVE PROVIDED FULL ANALYSIS, EVIDENCE AND CONCLUSIONS FOR ALL THE APPEAL POINTS IN THE STAFF REPORT.

AND I'M GOING TO GO OVER A SUMMARY OF THE POINTS.

APPEAL POINT #1: THE DESIGNATION OF THE EXISTING USE AS MEDIA PRODUCTION IS INCORRECT AND THIS USE MUST BE TREATED AS ARTS AND CRAFT STUDIO SUBJECT TO THE PROVISIONS FOR PROTECTED NON-INDUSTRIAL USE IN THE MU-LI DISTRICT.

STAFF EVALUATED THE PERMIT HISTORY AND DETERMINED AS OF JULY 6, 1989 WAS MEDIA USES WHICH IS NOT A PROTECTED MEDIA USE.

EVEN IF THE USE WERE CONSIDERED ARTS AND CRAFTS STUDIO IT WOULD STILL NOT BE A PROTECTED NON-INDUSTRIAL USE BECAUSE IT WAS NOT ESTABLISHED AS OF JULY 6, 1989 AND IT HAS NOT BEEN A SINGLE STAND-ALONE USE.

POINT #2: THE 2008 STAFF REPORT CONSIDERS MEDIA PRODUCTION AS A PROTECTED USE.

WHEREAS THE MOST RECENT A.U.P., THE A.U.P. IN FRONT OF YOU, DESCRIBES THE SAME USE AS A NON-PROTECTED INDUSTRIAL USE.

BASED ON THE STAFF RESEARCH AND ANALYSIS, THE EXISTING USE IS STILL BEST IDENTIFIED AS MEDIA PRODUCTION AND NOT CONSIDERED A PROTECTED NON-INDUSTRIAL USE BY THE CODE.

AND THE REFERENCE IN 2008 VARIANCE STAFF REPORT WAS MADE IN ERROR AND CANNOT SUPERSEDE THE APPLICABLE REQUIREMENTS AND DEFINITIONS PRESENT IN THE ZONING ORDINANCE TITLE 23 AND REQUIRED FINDINGS ARE MADE BASED ON THE CIRCUMSTANCES AT THE TIME A DECISION IS MADE ON AN APPLICATION.

APPEAL POINT #3: THE PROPOSED PROJECT WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THOSE WORKING AT 2600 TENTH STREET

BECAUSE THE CONVERSION OF MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT DIMINISHES THE ABILITY FOR ARTISTS TO COLLABORATE ON PROJECTS AND LIMITS THEIR CONTRIBUTION TO CITY.

THE PROPOSED PROJECT INCLUDES A CHANGE OF USE FROM MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT WITHIN AN EXISTING BUILDING IN THE MU-LI DISTRICT WHERE LIGHT USE INDUSTRIAL USE IS ALLOWED.

RESEARCH AND DEVELOPMENT IS ALLOWED IN THIS DISTRICT AND THE PROPOSED PROJECT CONFORMS TO THE APPLICABLE DEVELOPMENT STANDARD.

APPEAL POINT #4, THE CHANGE OF USE DOES NOT BETTER SERVE THE PURPOSES OF THE DISTRICT AS REQUIRED BY THE TENANT SPACE RECONFIGURATION SECTION.

STAFF DIDN'T MAKE ANALYSIS FOR THIS APPEAL POINT BECAUSE THE FINDING REFERENCED IN THE APPEAL LETTER ARE IN REGARDS TO THE TENANT SPACE RECONFIGURATION.

SO IT DOESN'T APPLY TO THE CHANGE OF USE.

APPEAL POINT #5, THE CHANGE OF USE IS NOT CONSISTENT WITH THE FOLLOWING 2 MU-LI DISTRICT PURPOSES.

I'M GOING TO READ THOSE.

ENCOURAGE DEVELOPMENT OF A MIXED USE LIGHT INDUSTRIAL AREA FOR A RANGE OF COMPATIBLE USES AND THE SECOND ONE ENCOURAGE THE CREATION AND CONTINUATION OF WELL-PAID JOBS WHICH DO NOT REQUIRE ADVANCED DEGREES. APPELLANTS BELIEVE THERE'S PLENTY OF SPACE

ALREADY DEDICATE TODAY RESEARCH AND DEVELOPMENT IN BERKELEY WHILE THERE'S NOT ENOUGH FOR ARTISTS AND FILMMAKERS AND MOST RESEARCH AND DEVELOPMENT JOBS REQUIRE ADVANCED DEGREES. IN WHICH STAFF RESPONDS TO BY SAYING THAT RESEARCH AND DEVELOPMENT IS CLASSIFIED AS AN INDUSTRIAL AND HEAVY COMMERCIAL USE AND IT IS COMPATIBLE WITH A RANGE OF USE THAT'S ARE ALLOWED WITHIN THE DISTRICT.

IT WOULD ALLOW A VARIETY OF RESEARCH AND DEVELOPMENT TENANTS. THEY MUST BASE THEIR DECISION ON THE REQUIRED FINDINGS AND CONSIDER THE PROPOSED LAND USE IN THEIR DECISIONS.

THEY MAY NOT DENY OR APPROVE A PROJECT BASED ON SPECULATION, UNSUBSTANTIATED OPINIONS OR THE LEVEL OF SUPPORT OR OPPOSITION OF VARIOUS PARTIES REGARDING POTENTIAL ECONOMIC AND SOCIAL IMPACTS.

OH, SORRY.

AND APPEAL POINT #6, THE PROPOSED PROJECT DOESN'T ABIDE BY THE WEST BERKELEY PLANS GOALS AND POLICIES FOR THE PROTECTED ARTS USES AND IN PARTICULAR, GOAL #7, FOR ECONOMIC DEVELOPMENT AND WEST BERKELEY PLAN APPENDICES, APPENDIX B CULTURAL RESOURCES OF WEST BERKELEY ARE NOT SUPPORTED FY THE PROPOSED PROJECT.

THE EXISTING USE IS MEDIA PRODUCTION AND ANY CURRENT ARTS CRAFT STUDIO WOULD NOT MEET THE CRITERIA FOR A PROTECTED NON INDWRAUFLT USE.

THE PROPOSED PROJECT WHICH IS A LIGHT INDUSTRIAL MANUFACTURING USE WOULD NOT BE COUNTER TO THE GOAL POLICY OR IMPLEMENTATION STRATEGY RAISED IN THE APPEAL.

DID I GO OVER ALL OF THE -- YES, SORRY.

SO RECOMMENDATION IS BECAUSE THIS PROJECT IS CONSISTENT WITH THE ZONING ORDINANCE AND GENERAL PLAN, AND WOULD HAVE MINIMAL IMPACT ON SURROUNDING PROPERTIES, STAFF RECOMMENDS THAT THE ZONING ADJUSTMENTS BOARD UPHOLD THE ZONING OFFICER DECISION AND APPROVE THE A.U.P. PER FINDINGS AND CONDITIONS.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

WONDERFUL.

THANK YOU SO MUCH.

NOW WE WILL GO TO THE APPELLANT.

THE APPELLANT WILL HAVE FIVE MINUTES. OH, SORRY, COMMISSIONER QUESTIONS, THANK YOU SO MUCH, STAFF.

YES?

COMMISSIONER SANDERSON?

>> D. Sanderson: CAN YOU TELL ME WHO OCCUPIES THESE THREE UNITS NOW?

ARE THEY VACANT?

>> NILU KARIMZADEGAN: THIS IS A GOOD QUESTION FOR THE APPLICANT. I BELIEVE THEY WERE, BUT I WANT TO CONFIRM IT.

>> D. Sanderson: OKAY, THANK YOU.

>> Vice Chair Gaffney: COMMISSIONER QULUNG?

-- YUNG?

>> B. Yung: SO THE ITEM BEFORE US NOW IS AN APPEAL.

SO I WANTED TO ASK, WE ARE MAKING A DECISION BASED ON THE CIRCUMSTANCES OF THE ORIGINAL ZONING -- THIS IS A BY-RIGHT DECISION?

>> NILU KARIMZADEGAN: SORRY IF WHAT I SAID WAS CONFUSING, THIS IS AN APPEAL OF THE A.U.P. WHICH WAS APPROVED BY THE ZONING OFFICER.

I JUST EXPLAINED THAT PRIOR TO THIS A.U.P., THERE WAS CONVERSION OF MEDIA PRODUCTION TO RESEARCH AND DEVELOPMENT UNDER A SEPARATE BY-RIGHT ZONING CERTIFICATE.

THAT HAPPENED BACK IN 2022.

THE BLUE AREA ON PLANS, THAT'S THE AREA.

>> I CAN ALSO HELP TO MAYBE CLARIFY TOO.

WITHIN THE MU-LI, THE RESEARCH AND DEVELOPMENT, THE A.U.P.

STANDARD IS A SIZE THRESHOLD.

SO ONCE YOU CROSS 20,000 SQUARE FEET OF RESEARCH AND DEVELOPMENT IT REQUIRES AN A.U.P., WHICH IS WHY THE PREVIOUS APPROVAL WAS JUST UNDER 20,000 -- 19,000 SOMETHING.

SO THIS 9700 SQUARE FOOT ADDITION PUTS IT OVER THE 20,000 SQUARE FOOT THRESHOLD WHICH IS WHY IT NEEDED THE A DISCRETIONARY APPROVAL.

>> B. Yung: SO THIS APPEAL IS FOR THE A.U.P. WHICH WAS  
ORIGINALLY GRANTED BY THE ZONING OFFICER?

OH, OKAY.

THANK YOU.

ACTUALLY, JUST TO CLARIFY, WAS THE DECISION MADE BY THE ZONING  
OFFICER ALSO A JUDICIAL ACT?

>> THE ZONING OFFICER DECISION IS A DISCRETIONARY DECISION.

SO ADMINISTRATIVE USE PERMITS, THE ZONING OFFICERS, THE REVIEW  
AUTHORITY.

AND THEN FOR USE PERMITS, THE REVIEW AUTHORITY IS ZAB AND THEN  
ZAB REVIEWS APPEALS OF THE ZONING OFFICER DECISIONS.

>> Vice Chair Gaffney: THANK YOU.

GOOD QUESTIONS.

ANY OTHER QUESTIONS FOR STAFF BEFORE WE MOVE ON?

OKAY.

>> Chair Duffy: I HAVE A QUESTION BECAUSE THIS IS VERY, I  
REMEMBER THIS LAST TIME WHEN IT CAME BEFORE US A LITTLE BIT  
DIFFERENTLY.

THERE'S NOT ONLY HISTORY BUT SPLITTING HAIRS AROUND DEFINITIONS  
AND CLARITY REQUIRED.

I HAD A QUESTION, THESE DEFINITIONS REALLY MATTER.

THEY WERE IN THE DEFINITION AND ON THE SCREEN BUT THEY WEREN'T  
READ AND I'VE READ THEM.

HAVE THOSE DEFINITIONS CHANGED SINCE -- WELL, WHEN IS THE LAST TIME, WAS IT 1999 THESE DEFINITIONS WERE BAKED INTO THE WEST BERKELEY PLAN?

IS THAT WHAT IT IS?

I HAVE JUST A QUESTION.

I SEE IT NOW.

>> Vice Chair Gaffney: DO YOU HAVE AN ANSWER, FEEL FREE?

>> NO, THEY IMPLEMENT THE WEST BERKELEY PLAN.

SO IT WAS AFTER 1999, I STARTED WITH THE CITY IN 2023 AND WAS PART OF THE EFFORT TO TRY TO COME TO SOME AGREEMENT ON WHAT THESE DEFINITIONS ARE.

SO THESE DEFINITIONS WERE WORKED OUT AFTER MANY HOURS OF CONVERSATIONS WITH WEBAIC AND OTHER INTERESTED PARTIES.

THE EFFORT MADE IN THE ZONING ORDINANCE TO COMPLY WITH THE WEST BERKELEY PLAN.

AND, AT THE TIME, YOU KNOW, WE, THIS WAS KIND OF A MEDIATED OUTCOME.

SO MY UNDERSTANDING AT THE TIME WAS WITH THIS LANGUAGE, EVERYONE WAS HAPPY WITH THESE DEFINITIONS.

SO YOU KNOW, OPINIONS MAY CHANGE OVER TIME.

BUT AT THE TIME, THESE WERE OUR MEDIATED SOLUTION TO TRY TO GET EVERYONE ON THE SAME PAGE.

>> Chair Duffy: I REALLY APPRECIATE THAT CLARITY, THANK YOU.

AND I GUESS, HERE'S A QUESTION, IF THE DEFINITIONS WERE TO CHANGE, DO THEY ONLY CHANGE, I GUESS THE VARIETY OF WAYS THEY MIGHT.

BUT DOES ONE, WHEN IS IT, WHEN THE PLAN IS REVISITED AND REPUBLISHED, IS THAT WHEN WE REVISIT DEFINITIONS AGAIN?

>> D. Sanderson: NO, IF SOMEONE WANTED TO CHANGE THESE DEFINITIONS IT WOULD BE A ZONING ORDINANCE MODIFICATION. AND IT COULD CHANGE ONLY AS LONG AS IT WAS STILL CONSISTENT WITH THE WEST BERKELEY PLAN.

SO THE WEST BERKELEY PLAN DIDN'T PROVIDE ANYTHING LIKE THIS DETAIL.

IT'S A VERY ONE-SENTENCE DEFINITION THAT LEFT A LOT OF CONFUSION AND MISUNDERSTANDING.

SO THAT WAS THE IMPETUS TO CREATE THE DEFINITIONS TO PROVIDE MORE GUIDANCE ON WHAT WAS WHAT.

>> Chair Duffy: THANK YOU.

AND FOR ME, THIS IS A LEARNING MOMENT OF KNOWING THE POWER OF DEFINITIONS OF COURSE, AS MUCH AS THEY ALWAYS APPLY.

AT WHICH POINTS AND HOW THEN DO WE MAKE SURE THE CREATION OF NOT JUST DEFINITIONS BUT ALL THE DOCUMENTS, I'M JUST CURIOUS ABOUT WHEN THE PUBLIC PROCESS OCCURS, YOU KNOW?

ARE WE JUST, YEAH, THAT'S ALL.

I JUST WANTED TO PUT THAT OUT THERE.

>> D. Sanderson: ASK STAFF, BUT I DON'T BELIEVE IT'S AN ISSUE THAT'S BEFORE TO MODIFY THE ZONING ORDINANCE.

THERE'S NOT BEEN A REQUEST LATELY.

I MEAN SINCE THESE WERE ADOPTED EVERYBODY --

>> Chair Duffy: THIS IS IN THE ZONING ORDINANCE AND IT IS WHAT IT IS, IF THE ZONING ORDINANCE CHANGES IT'S A PUBLIC PROCESS, AND WE CHANGE DEFINITIONS AS WE WOULD ANYTHING ELSE IN THERE. APPRECIATE THAT.

THANK YOU.

JUST BEING CLEAR.

>> Vice Chair Gaffney: THANK YOU, COMMISSIONERS. IF WE HAVE NO MORE QUESTIONS FOR STAFF, NOW WE ARE FINALLY READY FOR HEARING FROM THE APPELLANT AND TO HAVE FIVE MINUTES. YOU ARE WELCOME TO SPLIT UP THE TIME HOWEVER YOU WANT BETWEEN APPELLANTS BUT FIVE MINUTES TOTAL.

>> BEFORE THAT I WAS ASKED I GIVE MY PHYSICAL DESCRIPTION FOR THOSE WHO ARE BLIND OR LOW VISION AND IT NOT COME OUT OF MY TIME.

THANK YOU, WE DO THAT IN ALL OUR MEETINGS AND THE DISABLED COMMUNITY.

MY NAME IS JIM LA BREKT, I'M AN OLDER WHITE GUY SITTING IN A CHAIR, I HAVE A MAROON SHIRT, GRAY HAIR AND BEARD AND MUSTACHE. I'M THE CO-DIRECTOR OF THE DOCUMENTARY CRIP CAMP (?) IF YOU HAVE SEEN IT, IT WAS OSCAR-NOMINATED.

IT WAS MADE IN THIS BUILDING.

AND WE'VE TALKED ABOUT DEFINITIONS AND SPLITTING HAIRS AND SUCH.

I THINK WHEN WE THOUGHT ABOUT PRODUCTION, ESPECIALLY LET'S SAY

25 YEARS AGO THERE WAS A GREAT DEAL OF EQUIPMENT, WE HAD ALL

THESE GREAT THINGS, THIS WAS A MUCH SMALLER FOOTPRINT.

I DON'T THINK OF IT AS BEING INDUSTRIAL, THIS IS AN ARTISTIC --

BUILDING IN 1996.

IT WAS CALLED BERKELEY SOUND ARTISTS FOR A VERY SPECIFIC REASON.

AND THAT WAS MY BRAND.

SO I JUST WANT TO SAY THAT FILM MAKING IS A COLLABORATIVE ART.

IT IS AN ARTISTIC ENDEAVOR, THERE IS CRAFT.

WE DO SPIT OUT SOMETHING THAT PEOPLE BUY, SO IT'S PRODUCTION.

BUT YOU CANNOT UNDERESTIMATE THE ARTISTIC -- WE'RE NOT MAKING

POTTERY HERE.

BUT WHAT IS THE DIFFERENCE?

WE ARE MAKING ART.

WE DON'T THINK OF EVERY SINGLE FILM AS ART.

BUT INDEED, I WANT TO TELL YOU THAT FILM MAKING HAS POWER THAT

LEGISLATION DOES NOT.

IT DOES NOT -- IT GETS INTO PEOPLE'S MINDS AND LIVING ROOMS.

>> THEY ARE COUNTING OUR MINUTES RIGHT NOW.

YOU WERE THINKING YOU WERE ABLE TO SPEAK BEFORE THE FIVE MINUTES

STARTED.

>> NO, I ONLY ASKED ABOUT THE VISUAL DESCRIPTION.

I WILL STOP.

>> I'M NOT ASKING YOU TO STOP BUT TIME TELLING EVERYBODY WE NEED TO GET UP HERE.

>> [ OFF MIC ]

>> NO.

>> Clerk: AS A POINT OF CLARIFICATION, WHEN YOU AND I SPOKE YOU MENTIONED HAVING A VISUAL DESCRIPTION, THE APPELLANT HAS FIVE MINUTES COLLECTIVELY TO SPEAK AS A GROUP.

>> THERE'S AN EDUCATIONAL VALUE TO WHAT WE DO ALSO, WE BRING IN A LOT OF APPRENTICES AND GRADUATE STUDENTS FROM U.C. BERKELEY. THANK YOU.

>> Vice Chair Gaffney: THANK YOU.

>> HELLO, MY NAME IS NORMAN JED RIFE, I'VE BEEN A TENANT IN THAT BUILDING SINCE FEBRUARY 1989.

THAT'S 34 YEARS I'VE BEEN ABLE TO MAKE MY LIVING AS A FILMMAKER AND ARTIST.

I'VE HAD 15 NATIONAL BROADCASTED DOCUMENTARIES, I CAME FROM TEXAS TO MAKE MY -- IN THE LAST TWO YEARS I MADE TWO OTHER FILMS, THE NINE LIVES OF BARBARA DANE AND FROM HERE FROM THERE WHICH WILL BE NATIONAL BROADCAST JULY 9 ON THE PBS SERIES VOICES. I FEEL WE ARE BEING -- I FEEL REALLY OFFENDED BY THE STAFF REPORT.

I FEEL THEY DON'T UNDERSTAND WHAT WE DO.

AND I FEEL LIKE WE ARE BEING PUT OUT OF BUSINESS, WHICH IS WHAT HAS HAPPENED SINCE WAREHAM HAS BOUGHT THE BUILDING.

>> MY NAME IS RICK AUERBACH, I'M THE STAFF OF WEST BERKELEY ARTS AND INDUSTRY COUNCIL.

I WANT TO RESPOND TO THE STAFF'S REPORT.

WE BELIEVE THAT ABSOLUTELY THESE SPACES ARE ART SPACES AND THEY ARE PROTECTED BY THE ORDINANCE.

I'M THE CO-AUTHOR OF THE ORDINANCE AND THE WEST BERKELEY PLAN.

WE 100% INTENTIONALLY INCLUDED THE WORD FILMMAKERS SPECIFICALLY BECAUSE OF THE EXISTENCE OF THE FILMMAKERS IN THE FANTASY BUILDING.

THAT WAS THE INTENTION OF THE SUBCOMMITTEE THAT WROTE THAT ORDINANCE, THERE'S NO DOUBT ABOUT IT.

LATER ON, THERE WAS NO MEDIA PRODUCTION IN THE ZONING ORDINANCE AT THAT TIME.

THERE WAS NO OTHER MENTION OF FILM.

IT WAS CLEAR THIS WAS THE INTENTION.

AND YOU COULD SAY ART AND CRAFT STUDIO IS COMMONLY DIFFERENTIATED FROM MEDIA PRODUCTION.

WHAT DOES THAT MEAN?

COMMONLY?

THIS WAS THE INTENTION OF THE PEOPLE WHO WROTE THIS.

I WAS INVITED BY THE ARTS COMMISSION IN 2008 TO REVISE THIS DEFINITION.

I WAS PART OF THAT PROCESS.

WE ADDED A FEW THINGS ABOUT THE USE OF COMPUTER, BUT WE KEPT FILMMAKERS IN THERE BECAUSE WE ALWAYS INTENDED AND THE ARTS AND PLANNING COMMISSION ALWAYS INTENDED THESE FILMMAKERS TO BE PROTECTED.

THIS VIOLATES THE WEST BERKELEY PLAN.

IT VIOLATES ECONOMIC GOAL #7.

PROTECT SMALL BUSINESSES, PARTICULARLY ARTS AND CRAFTS BUSINESSES SO THEY CAN CONTINUE TO FLOURISH IN WEST BERKELEY. ARTS AND CRAFTS BUSINESSES ARE KEY IN CREATING THE UNIQUE CHARACTER OF THE WEST BERKELEY.

THE CITY DEVELOPED THE PROTECTIVE ZONING OF ARTS AND CRAFTS TO PROTECT THESE BUSINESSES.

IT'S VITAL TO ENSURE IT IS GENERALLY PROTECTED FROM DISPLACEMENT.

USE ALL AVAILABLE MECHANISMS INCLUDING ZONING TO ASSURE ARTISTS REMAIN A VITAL PART OF WEST BERKELEY.

IT GOES ON AND ON.

I'M GOING TO CEDE MY TIME.

>> HI, REAL QUICK, VIVIAN KLEINMAN.

I HAVE BEEN THERE SINCE 1986.

THE AWARD, EUREKA FELLOWSHIP FOR ARTISTS BY THE -- FOUNDATION IN SAN FRANCISCO.

SO BY DEFINITION OF THE FLYSACKER FOUNDATION, I AM AN ARTIST AND  
A FILMMAKER.

I'M A FILM ARTIST.

THEY ARE ONE IN THE SAME.

I WILL STOP THERE.

>> Vice Chair Gaffney: THANK YOU.

>> I WOULD LIKE TO SAY THAT ON THE ISSUE OF --

>> Vice Chair Gaffney: YOU WILL HAVE A CHANCE FOR A REBUTTAL  
AFTER THE APPLICANT GOES.

THERE WILL BE TWO MORE MINUTES YOU AND THE APPLICANT WILL GET.

I WOULD SAY THAT'S PROBABLY THE BEST TIME YOU WILL GET.

THANK YOU FOR STAY TOGETHER FIVE MINUTE TIME LIMIT.

THERE IS A LOT OF YOU AND IT'S NOT EASY SO WE APPRECIATE IT.

IT'S NOW TIME FOR -- DO WE DO QUESTIONS?

IF ANY COMMISSIONERS DO HAVE ANY QUESTIONS FOR THE APPELLANTS,  
NOW YOU CAN FEEL FREE.

YEAH, COMMISSIONER SANDERSON?

>> D. Sanderson: SO WHEN I LOOK AT THE DEFINITIONS, AND I  
REMEMBER THE HAIR-PULLING NAIL-BITING WHATEVER PROCESS WE WENT  
THROUGH AT THE TIME.

SO ARE YOU SAYING THEN THAT MEDIA PRODUCTION IS A TYPE OF  
ART/CRAFT STUDIO?

SO THERE WAS A DISTINCTION AT THE TIME BETWEEN COMMERCIAL  
PRODUCTION AT THE TIME THE ART COMMUNITY SAID THAT'S NOT US.

AND ART/CRAFT STUDIO.

WHAT I'M HEARING, I THINK, IS THAT THE DISTINCTION BETWEEN PRODUCTION AND STUDIO IS, HAS BECOME MERGED IN YOUR MINDS? WHETHER IT IS OR ISN'T.

I'M TRYING TO UNDERSTAND THE APPEAL.

YOU HAVE TO SPEAK AT THE MIC.

>> ALL ARTS AND CRAFTS ARE INVOLVED WITH SOME ASPECT OF PRODUCTION.

THEY ALL PRODUCE A PRODUCT.

WHETHER IT'S A PAINTING OR WHETHER IT'S A FILM.

WHEN WE WROTE THE ORDINANCE ORIGINALLY WE SAW FILMMAKERS AS USING THEIR ARTISTIC CRAFT TO CREATE AN ARTISTIC EXPRESSION, WHICH WAS A PRODUCTION OF A FILM.

OR IF SOUND WAS ALREADY INCLUDED IN THAT AND THE OTHER THINGS THAT WENT ALONG WITH IT.

WE WERE THINKING ABOUT, YOU KNOW, THIS CONCEPT OF MEDIA PRODUCTION BECAUSE IT DIDN'T EXIST IN THE ORDINANCE.

>> D. Sanderson: RIGHT, WE HAD TO ADD THAT DEFINITION.

>> RIGHT, THAT WAS ADDED MUCH LATER.

AND NO ONE HAS EVER BROUGHT THIS UP.

THIS IS A NEW CONCEPT THAT ALL OF THE SUDDEN FILMMAKERS AREN'T ARTISTS AND THEY DON'T DESERVE PROTECTION.

AND WE HAVE IDEAS WHY THIS IS BROUGHT UP NOW.

IT HASN'T BEEN BROUGHT UP IN ALL THESE YEARS, IT'S NEVER BEEN QUESTIONED.

AND THE ARTS COMMISSION ALWAYS INTENDED THEM TO BE PROTECTED.

THANK YOU.

>> S. O'Keefe: I HAVE A QUESTION OF THE APPELLANT.

CAN YOU PLEASE GIVE AN EXAMPLE, ANY OF YOU, OF A USE THAT WOULD BE MEDIA PRODUCTION, BUT WOULD NOT BE AN ART STUDIO?

I'M ALSO TRYING TO UNDERSTAND THIS DISTINCTION.

CAN SOMEONE COME UP.

GIVE US A SPECIFIC EXAMPLE, SO I CAN UNDERSTAND A MEDIA PRODUCTION BUT NOT ART STUDIO.

>> USING THE SAME EQUIPMENT, SAME EDITING SOFTWARE WOULD BE A CORPORATE INDUSTRIAL, A COMPANY THAT PRODUCES CORPORATE INDUSTRIALS, HOW TO SUCCEED IN DUCK HUNTING.

HOW TO SELECT A GREAT EMPLOYEE.

A PORTRAIT OF THE C.E.O.

YOU KNOW, --

>> S. O'Keefe: SO YOU ARE SAYING THIS PARTICULAR DEFINITION IN OUR CODE IS JUST SPECIFICALLY FOR CORPORATE TRAINING VIDEOS? THAT'S ONE EXAMPLE?

>> I'M SAYING AS FILMMAKERS WE DON'T HAVE SUCH A NARROW DEFINITION OF OURSELVES.

WE USE WORDS INTERCHANGEABLY, WE USE THE WORD ARTIST, FILMMAKER, MEDIA PRODUCTION, THEY ARE INTERCHANGEABLE.

BUT THERE'S ONE ASPECT OF MEDIA PRODUCTION THAT IS NOT THE ENTIRE DEFINITION OF THE WORD MEDIA PRODUCTION THAT WOULD BE CORPORATE INDUSTRIALS.

>> S. O'Keefe: I'M JUST TRYING TO UNDERSTAND, THIS MUST BE A PRETTY BIG CATEGORY IF IT'S ITS OWN DEFINITION AND TREATED SEPARATELY.

THANK YOU.

>> Vice Chair Gaffney: DO ANY OTHER COMMISSIONERS HAVE ANY QUESTIONS?

COMMISSIONER YUNG?

NO QUESTIONS.

LOOKS LIKE WE HAVE NO QUESTIONS FOR THE APPELLANT RIGHT NOW.

IT'S NOW TIME FOR FIVE MINUTES FOR THE APPLICANT.

AFTER THE APPLICANT GOES, YOU WILL HAVE FIVE MINUTES FOR REBUTTAL.

>> GOOD EVENING, THANK YOU FOR BEING HERE AND HAVING A QUORUM.

I'M LISA VOGEL, WITH WAREHAM.

I WANT TO THANK STAFF FOR THE DILIGENT WORK ON THE APPLICATION AND COMPREHENSIVE AND WELL-THOUGHT OUT REPORT THAT WAS PRESENTED TONIGHT.

I JUST WANT TO GIVE A LITTLE RECAP ON OUR CURRENT TENANT BASE AND OUR APPLICATION.

SO WE ARE PUTTING IN FOR AN ADDITIONAL 9,750 SQUARE FEET TO R & D.

WE HAVE BEEN TRYING TO LEASE THOSE SPACES SINCE 2018 ON THE GROUND FLOOR AND WE HAVE HAD NO VIABLE TENANTS.

CURRENTLY THE EXISTING MEDIA TENANTS SOME HERE TONIGHT, THANK YOU, RESIDE MAINLY ON THE THIRD, FOURTH AND SIXTH FLOOR OF THE BUILDINGS. THERE'S A DEEP CLUSTER OF THOSE.

I HAVE SIX SUITES AVAILABLE FOR ANY MEDIA PRODUCTION IN THE MARKET, I WOULD WELCOME MORE MEDIA PRODUCTION TO PLEASE COME AND JOIN OUR CLUSTER AT 2600 TENTH STREET.

I WILL HAVE TO SAY IN THE APPELLANTS, I SAW THERE WAS SOME WORDING WE WERE NOT SUPPORTING IN MEDIA PRODUCTION TENANTS.

SINCE BUYING THE BUILDING WE KEPT FANTASY STUDIOS OPENED FOR TEN YEARS, AFTER SALZANS OPENED HIS COMPANY DOWN TO LOS ANGELES.

WE WERE ONE OF THE FOUNDERS OF BERKELEY FILM FOUNDATION, ALONG WITH SALZAN'S COMPANY IN CITY OF BERKELEY.

SINCE THE FORMATION OF THAT FOUNDATION IN 2009 THERE'S BEEN ISSUED OVER \$2 MILLION GRANTS TO EAST BAY FILMMAKERS INCLUDING SOME OF OUR TENANTS AT 2600.

IN CONCLUSION WE APPRECIATE THE THOROUGHNESS OF THE REPORT, WE ASK IT SHOULD BE DENIED AND WE GET THE ADMINISTRATIVE USE PERMIT APPROVED.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

THANK YOU.

THERE IS NOW TIME FOR -- SORRY, QUESTIONS.

I'M FORGETTING THE QUESTIONS AGAIN.

COMMISSIONER SANDERSON?

>> D. Sanderson: SORRY, I KEEP HUGGING THE MIC.

ANYONE ELSE CAN --

>> Vice Chair Gaffney: APPRECIATE YOUR KNOWLEDGE.

>> D. Sanderson: THIS IS A QUESTION FOR THE APPLICANT.

SO RIGHT NOW THOSE SPACES ARE LABELS WHAT AND THEY ARE VACANT?

ARE YOU TRYING TO LEASE THEM AS ARTS AND CRAFTS?

WHAT ARE YOU ADVERTISING FOR?

>> RIGHT NOW IT'S MEDIA PRODUCTION AND WE ARE TRYING TO CONVERT THAT.

IT WOULD BE ARTS AND CRAFTS, I'M NOT REALLY SURE THE DEFINITION IS DIFFERENT.

>> D. Sanderson: SO IF MEDIA PRODUCTION -- BY MAKING THIS CHANGE TO R&D HOW DOES THAT CHANGE WHAT HAPPENS IN THAT PLACE?

>> IT WOULD BE RESEARCH AND DEVELOPMENT TENANT, MAYBE WAREHOUSE.

I MEAN THERE JUST SEEMS TO BE A LITTLE MORE ACTIVITY IN THAT

MARKET, ALTHOUGH I WILL SAY THE MARKET IS NOT VERY STRONG RIGHT NOW AS WE ALL KNOW.

BUT THERE'S DEFINITELY A BETTER CHANCE OF TRYING TO GET THAT

9,000 SQUARE FEET LEASED.

AGAIN I HAVE 8,000 SQUARE FEET, ALMOST THE SAME AMOUNT UPSTAIRS READY TO GO FOR MEDIA PRODUCTION.

>> D. Sanderson: SO MEDIA PRODUCTION AND ARTS AND CRAFT STUDIOS ARE WHAT YOU HAVE AVAILABLE THAT ARE NOT BEING PICKED UP?

>> CORRECT, RIGHT.

THERE'S 30 SPACES AND 8,000 SQUARE FEET.

>> D. Sanderson: IS THERE ANY, DO YOU HAVE ANY INFORMATION ON COMPARABLE RENTS OR LEASING COSTS FOR THOSE SPACES?

>> FOR THE MEDIA PRODUCTION SPACES?

>> D. Sanderson: UH-HUH.

>> YOU KNOW, WE DO A VERY FAIR DEAL, THEY ARE USUALLY NOT MARKET.

AND I LET THE TENANTS SPEAK TO THAT.

BUT WE UNDERSTAND THAT THE MEDIA PRODUCTION, THE FILMMAKERS, THE SOUND EDITORS ARE ON A TIGHT BUDGET THAT'S WHY THE SPACES ARE LIKE 200-300 SQUARE FEET.

THERE'S A FLOOR PLAN THAT MIGHT BE HELPFUL TO PULL IT UP JUST TO SEE WHAT A MEDIA PRODUCTION FLOOR LOOKS LIKE AND YOU CAN SEE ALL THE SPACES.

>> [ OFF MIC ]

>> YEAH.

>> [ OFF MIC ]

>> Vice Chair Gaffney: ALL RIGHT, YOU WILL HAVE TIME FOR REBUTTAL IN JUST A SECOND.

YOU ARE ALL GOOD?

ANY OTHER COMMISSIONERS HAVE QUESTIONS FOR THE APPLICANT AND WE WILL MOVE TO REBUTTAL?

OKAY, SOUNDS LIKE WE HAVE NO MORE QUESTIONS OF THE APPLICANT.

NOW ANYONE WHO WANTS TO REBUTTAL, YOU HAVE TWO MINUTES.

>> TO CLARIFY WHY THE SIXTH FLOOR IS EMPTY, THEY TOOK ALL OF THE FILMMAKERS OFF THE SIX FLOOR, ABOUT NINE OFFICES, NINE DIFFERENT FILMMAKERS WERE REMOVED FROM THE SIXTH FLOOR OR SQUISHED ON OTHER FLOORS OR PEOPLE DECLINED TO ACCEPT THOSE SPACES BECAUSE THEY WEREN'T AS NICE AS THE SIXTH FLOOR SO WHAT WE JUST HEARD WAS NOT TRUE.

FOR EXAMPLE, ON THE SIXTH FLOOR ACROSS THE HALL WAS A GAY NAMED ADRIAN VEREL, VETERAN OF THE U.S. MARINES. AFRICAN AMERICAN, HE RENTED AN OFFICE BECAUSE HE HAD A CURIOSITY IN FILM.

WE STARTED TALKING, I STARTED MENTORING HIM.

HE NOW IS THE GUEST ARTIST AT STANFORD UNIVERSITY'S ART AND DIVERSITY PROGRAM.

SO THANKS, I CAN'T SAY I PUT HIM THERE, BUT I CAN SAY THANKS TO THE INTERACTION WE HAD, HIS CAREER HELPED GET SHAPED.

>> AS TO THE DATE JULY 6, 1989 WE CONTEND THE SPACES AT ISSUE WERE ABSOLUTELY OCCUPIED BY PROTECTED ARTS USES AS OF THAT TIME AND WE HAVE EVIDENCE TO THAT EFFECT.

FROM THE MEDIA AND PEOPLE HERE WERE IN THE BUILDING AT THAT TIME, AND THEY KNOW WHO WAS OCCUPYING THAT.

IN CONTRADICTION TO STAFF'S DENIAL OF APPEAL, FANTASY FILMMAKERS  
CONTEND THE PROPOSED SCOPE OF THIS PERMIT WOULD BE DETRIMENTAL  
TO THE GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE  
AREA.

AND WOULD LEAD TO LOSS OF CRITICAL JOBS AND CULTURAL DIVERSITY  
AND VIOLATES IMPORTANT PROVISIONS OF THE BERKELEY MUNICIPAL  
CODE, WAREHAM HAS FOUR MILLION SQUARE FEET OF R&D SPACE IN THE  
EAST BAY, ONE MILLION IN BERKELEY.

THERE'S ANOTHER MILLION SQUARE FEET COMING ON FROM DEVELOPMENTS  
THAT HAVE JUST BEEN BUILT IN WEST BERKELEY.

THEY CONTEND THEY NEED THESE 2,000 SQUARE FEET FROM THE  
FILMMAKERS FOR R&D.

IT MAKES NO SENSE.

WE NEED THIS CULTURAL INSTITUTION TO MAINTAIN IN OUR CITY.

IT'S ICONIC, IT'S ONE OF THE MOST IMPORTANT ARTS BUILDING IN THE  
AREA.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> I JUST WANT YOU TO LOOK AT THE GROUND PLAN PLEASE, IF IT'S A  
VERY LARGE SPACE THAT DOES NOT SERVE OUR COMMUNITY.

WE ARE PRICED OUT OF THIS BUILDING.

AT LEAST WHAT WE WERE TOLD THEY WERE GOING TO OPEN UP TO LARGE  
SPACES. I JUST WANT YOU TO PLEASE LOOK AT THAT.

>> [ OFF MIC ]

>> Vice Chair Gaffney: THANK YOU SO MUCH.

THANK YOU.

DOES ANYONE HAVE ANY QUESTIONS, ANY FOLLOW-UP TO ANY OF THAT?

ALL RIGHT.

IT LOOKS LIKE WE DO NOT.

THE APPLICANT ALSO GETS A TWO MINUTE REBUTTAL OR YOU ALSO DON'T NEED TO TAKE IT.

>> I JUST WANT TO SHARE --

>> Vice Chair Gaffney: COME TO THE MICROPHONE.

>> THE THREE SPACES THAT WE ARE TALKING ABOUT, ONE OF THEM ON THE SECOND FLOOR HAS BEEN VACANT SINCE 2008.

NOBODY IN THE MEDIA PRODUCTION ARENA HAS WANTED IT.

ON THE GROUND FLOOR THEY HAVE BEEN VACANT SINCE 2018.

AND AGAIN, I WISH I HAD THE SLIDE.

I'VE GOT 30 SPACES TO LEASE RIGHT NOW TO ANY MEDIA PRODUCTION TENANTS AND I WOULD WELCOME THAT.

WE ARE VERY SUPPORTIVE OF THIS COMMUNITY AND WE ARE VERY THRILLED WE HAVE A BIG CLUSTER OF MEDIA PRODUCTION AND VERY, VERY TALENTED PEOPLE IN THE BUILDING.

THANK YOU.

>> Vice Chair Gaffney: IS THERE A SLIDE YOU WANTED TO BE SHARED?

IT LOOKS LIKE WE ARE GOING TO PULL THEM UP RIGHT NOW, I THINK.

THERE'S A LISA BULLWINKLE WHO RAISED HER HAND.

ARE YOU WITH EITHER THE APPLICANT OR APPELLANT?

OKAY.

PART OF PUBLIC COMMENT, PERFECT.

DON'T WORRY, ANYONE FROM PUBLIC COMMENT, WE WILL BE GETTING TO YOU SOON.

YOU HAVE A LITTLE MORE TIME.

>> THIS IS THE SIXTH FLOOR.

THE WHITE SPACES ARE CURRENTLY AVAILABLE.

THIS IS ON THE SIXTH FLOOR AND THERE'S ANOTHER PLAN FOR THE FOURTH FLOOR, THERE'S ONLY ON THE FOURTH FLOOR, THAT CLUSTER IS PRETTY TIGHT.

SO ALL THE PURPLE, IF YOU LOOK AT IT AS PURPLE IS LEASED.

AND WHERE YOU SEE THE WHITES OUTSIDE OF THE CONFERENCE ROOM ARE AVAILABLE TOO.

BETWEEN THE TWO FLOORS THERE'S 30 SPACES AND I WOULD LOVE TO FILL THEM.

THANK YOU.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT.

IF ALL THE COMMISSIONERS ARE DONE WITH THEIR QUESTIONS THEN?

LOOKS LIKE WE ARE ALL GOOD, WE WILL MOVE TO PUBLIC COMMENT NOW.

ANYONE ONLINE, IF YOU COULD PLEASE RAISE YOUR HAND IF YOU WOULD LIKE TO SPEAK.

JUST BASED ON THE SHEER NUMBER OF GREEN CARDS ALONE WE WILL HAVE TO DO ONE MINUTE PER SPEAKER.

I WILL GO FROM THE GREEN CARDS, IN-PERSON SPEAKERS FIRST AND THEN ONLINE.

THE FIRST SPEAKER WILL BE BETSY MORRIS, YOU WILL HAVE A MINUTE.

>> BETSY MORRIS, I'M A WHITE WOMAN WITH BLUE GLASSES WEARING A GRAY BLAZER AND I HAVE KIND OF BROWNISH-GRAYISH HAIR.

SO AS A LONG-TIME RESIDENT OF WEST BERKELEY, WHILE THE WEST BERKELEY PLAN WAS BEING DEVELOPED, I ACKNOWLEDGE I KNOW SO MUCH LESS OF THE DETAILS THAN WEBAIC AND RICK AUERBACH.

HE HAS DONE AN INCREDIBLE JOB, OR THEY HAVE DONE AN INCREDIBLE JOB OF ASSEMBLING INFORMATION, TO THE BEST OF MY KNOWLEDGE AS I READ IT, I SAID YEAH, THAT STRIKES TRUE.

THE IDEA WE HAVE HERE IN BERKELEY A UNIQUE CLUSTER OF INDEPENDENT FILMMAKERS, DOING INCREDIBLY CREATIVE WORK.

I RECOMMEND IT TO ANYONE, IT'S A FABULOUS, FABULOUS DOCUMENTARY.

AND I DIDN'T EVEN KNOW IT WAS BEING PRODUCED HERE IN BERKELEY.

SO THE IDEA WHEN I THINK OF IT EVER BEING QUESTIONED AS AN ARTS-RELATED, YES, THERE ARE SUCH THINGS AS INDUSTRIAL ARTS AND COMMERCIAL ARTS.

AND THEY PRODUCE VALUE FOR THIS CITY AS A PLACE FOR CREATIVE,

INDEPENDENT ARTISTS. NOW THE PIECE THAT REALLY FRUSTRATES ME, I

STILL DON'T GET IT, AND I RESPECT THAT WAREHAM HAS A

PROFESSIONAL HERE, WHY WOULD YOU, WITH A FAIRLY LARGE VACANCY

RATE GOING ON FOR R&D AND OFFICE SPACE IN THE EAST BAY, WHY

WOULD YOU THROW OUT, OR DISCOURAGE TENANTS WHO HAVE BEEN THERE A

LONG TIME BY RAISING THE RENTS SO EXCESSIVELY THAT THEY CAN NO LONGER AFFORD IT.

>> Vice Chair Gaffney: I'M SORRY.

>> I UNDERSTAND THERE'S LEASING ISSUES I DON'T UNDERSTAND, BUT I WANT TO SUPPORT THIS.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

WONDERFUL.

ALL RIGHT.

WE WILL NOW GO TO CLAIRE SHOWIT?

>> SO IS THIS ON?

GREAT.

HI, I'M CLAIRE SHONE, A RESIDENT OF BERKELEY.

I WORKED AT THE SALZANT FILM STRUCTURE, KNOWN AS THE FANTASY BUILDING FOR 18 YEARS WHEN SAUL OWNED THE BUILDING.

HE CREATED A WONDERFUL COMMUNITY THERE BY SUPPORTING OUR WORK, KEEPING OUR RENTS LOW.

AND FANTASY WAS A THRIVING PRODUCTIVE PLACE WHERE BEAUTIFUL, PROFOUND, AWARD-WINNING AND SOCIALLY RELEVANT MEDIA WAS MADE.

WHEN WAREHAM BOUGHT THE BUILDING IT WAS CLEAR FROM THE BEGINNING TO ALL OF US, THEY WANTED US OUT.

MY RENT WAS DOUBLED AND THEN TRIPLED OVER THAT.

AT PIKE COMMUNITY, WE JUST WANTED TO SIT DOWN AND TALK TO THEM ABOUT WHAT WAS GOING TO GO ON.

THEY REFUSED TO TALK TO US AS A GROUP.

INSTEAD THEY TRIED TO DIVIDE US, PICKING US OFF ONE BY ONE WITH SECRET DEALS, SOME OF US GETTING BETTER DEALS THAN OTHERS.

I WAS DRIVEN OUT OF THE BUILDING BY WAREHAM.

>> Vice Chair Gaffney: YOU ARE OUT OF TIME, ONE MORE SENTENCE.

>> AS WERE MANY OTHER MEDIA PRODUCERS AND I WAS VERY GRATEFUL FOR THE ONES WHO STAYED.

PLEASE DON'T LET WAREHAM TEAR DOWN THIS VITAL FILM COMMUNITY ANY FURTHER.

>> Vice Chair Gaffney: THANK YOU VERY MUCH.

I APPRECIATE EVERYONE, I KNOW THE ONE MINUTE IS HARD.

WE WILL GO TO JAMES LEBRECHT NOW.

NO?

THEN STEPHEN MOST.

>> HELLO, I'M AN OLD GUY WITH GLASSES AND GRAY HAIR WEARING A VEST.

I'M A FILMMAKER, DOCUMENTARY WRITER AND PRODUCER.

ALSO THE AUTHOR OF A BOOK CALLED "STORIES MAKE THE WORLD, REFLECTIONS ON STORYTELLING AND THE ART OF THE DOCUMENTARY."

AND IN THAT BOOK, WHICH WAS PUBLISHED IN 2017 ARE CHAPTERS ABOUT DOCUMENTARIES, SOME OF THEM AWARD-WINNING AND ACADEMY-AWARD NOMINATED THAT WERE MADE IN BERKELEY, INCLUDING BERKELEY IN THE 60s, FREEDOM ON MY MIND AND OTHERS.

AND I JUST WANT TO SAY THAT THE FILM MAKING COMMUNITY WHEN I  
MOVED NEAR IN 1987 WAS WIDELY RECOGNIZED AS THE CORE OF THE FILM  
MAKING COMMUNITY IN THE ENTIRE EAST BAY.

IT'S NOT JUST A MATTER OF HAVING GREAT ARTISTS AT THE FANTASY  
BUILDING.

THEIR WORKS SUPPORTED AN ECOSYSTEM OF DIRECTORS, PHOTOGRAPHERS,  
WRITERS --

THIS IS A GREAT BENEFIT NOT ONLY TO BERKELEY BUT ALSO TO THE  
WORLD AND THIS COMMUNITY NEEDS TO BE ALLOWED TO STAY.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT.

WE ARE GOING TO GO TO FRANK ZIMACONA?

>> HI, I HAVE PEPPERED HAIR, I THINK AND BLACK GLASSES.

HI, GOOD EVENING, I'M FRANK ZIMACONA.

I'M IN THE BUILDING.

I'VE BEEN THERE 13 YEARS, MULTI-CAMERA LIVE DIRECTOR.

I DO A LOT OF LIVE OPERAS, SYMPHONIES AND BALLETS AROUND THE  
COUNTRY.

BUT I'VE BEEN AT THE ZANT CENTER FOR 13 YEARS LIKE I SAID.

THE REALLY A UNIQUE PLACE.

WHY IS IT UNIQUE.

THERE'S A LOT OF EDITORS, PRODUCERS, SOUND MIXERS, DESIGNERS,  
WRITERS, EXECUTIVE PRODUCERS UNDER ONE ROOF.

I DON'T KNOW A CREATIVE HUB ANYWHERE THAT'S LIKE THIS IN  
NORTHERN CALIFORNIA OR EVEN IN THE U.S.

THERE'S MORE DOCUMENTARIES AND PROGRAMS BEING CREATED BY THIS  
COMMUNITY THAT MOST PUBLIC TV STATIONS AROUND THE COUNTRY.

IT'S A PLACE AND YOU HAVE HEARD IT, IT'S A PLACE OF  
COLLABORATION, A THINK-TANK FOR ARTISTS WHO COME AND SHARE THEIR  
WORK WITH EACH OTHER.

IT'S A GREAT THING, YOU COULD GO DOWN THE HALL TALK TO EACH  
OTHER ABOUT IDEAS, GET FEEDBACK AND THAT'S WHAT A COMMUNITY IS  
ALL ABOUT.

IT'S UNIQUE.

AND THAT'S THE UNIQUENESS OF THE ZANT CENTER OR FANTASY CENTER  
OR WHATEVER YOU WANT TO CALL IT.

BUT IT'S THERE AND IT'S UNIQUE.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT, WE WILL HAVE GREGORY SHARPEN UP NEXT.

>> MY NAME IS GREGORY SHARPEN, I'M LONG-HAIRED AND BEARDED AND  
SOMEWHAT DISREPUTABLE.

I'M AN EDITOR IN THE ZANTS BUILDING.

I HAVE BEEN THERE MORE DECADES THAN I CARE TO THINK ABOUT.

I WANT TO ADD ONTO THE IDEA OF IT BEING AN ARTISTIC COMMUNITY  
AND PEOPLE GOING DOWN THE HALL AND TALK WITH ONE ANOTHER.

AND HAVE ARTISTIC CONVERSATIONS, HAVE PHILOSOPHICAL  
CONVERSATIONS. HAVE AN INTERCHANGE THAT I THINK INEVITABLY MAKES

ALL OF OUR WORK AND ALL OF OUR PRODUCTIONS AND EVERYTHING THAT MUCH BETTER BECAUSE IT IS A COMMUNITY OF US.

AND TO CHIP AWAY SLOWLY AT THAT BUILDING LIKE THE FACT THEY GOT RID OF THE FANTASY STUDIO, AUDIO STUDIOS IN THE BASEMENT STILL THAT HURTS ME A LOT.

BECAUSE I DID A LOT OF GOOD WORK IN THOSE STUDIOS. EACH CUT IS ANOTHER KIND OF BODY BLOW TO THE ARTISTIC COMMUNITY IN THE BUILDING.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

ALL RIGHT, WE ARE GOING TO GO TO JOHN KIRL NOW.

>> HELLO, I'M JOHN KIRL.

I WORKED IN THE SAW TOOTH BUILDING AS A CABINET MAKER FOR OVER 40 YEARS.

I WAS ONE OF THE PEOPLE WHO WERE AUTHORS OF THE WEST BERKELEY PLAN.

I WORKED VERY CLOSELY WITH WEBAIC ON THESE SPECIFIC ORDINANCES.

I HELPED WRITE THESE ORDINANCES. I'M HERE IN SUPPORT OF THE FILMMAKERS. EVEN AT THAT TIME IN THE 1980s AND THE 1990s THEY WERE ONE OF THE MOST IMPORTANT BUILDINGS IN WEST BERKELEY.

IF YOU WOULD HAVE SEEN WHAT WAS HAPPENING WHEN WE STARTED THE WEST BERKELEY PLAN, DEVELOPERS WERE BRINGING ARTS AND CRAFTS OUT, THEY WERE CHANGING EVERYTHING.

AND THIS WAS THE ONLY PLACE IN BERKELEY WHERE CRAFTS AND ARTISTS COULD AFFORD TO WORK.

AND SO YOU TAKE THIS AWAY, IT'S LIKE BY CHANGING THE DEFINITIONS, BY DOING ONE AT A TIME, YOU WIND UP GETTING RID OF THE WHOLE THING.

I WILL ASK YOU TO RISE TO THIS OCCASION, BECAUSE THIS IS WHAT YOU ARE HERE FOR.

TO CORRECT MISTAKE THAT'S ARE MADE BY BERKELEY STAFF AND THIS IS A MISTAKE THAT IS OF GREAT IMPORTANCE TO THE WHOLE OF BERKELEY, NOT JUST WEST BERKELEY, NOT JUST THE FILMMAKERS, NOT JUST THE ARTISTS.

>> Vice Chair Gaffney: THANK YOU.

GOT TO WRAP IT UP.

>> IT'S GOING TO TOTALLY CHANGE THE WHOLE NATURE OF BERKELEY.

I URGE YOU TO RISE AND CORRECT THIS MISTAKE.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

THANK YOU.

ALL RIGHT.

GEORGIA [INAUDIBLE]

>> HELLO, MY NAME IS GEORGIA AND I'M A PAINTER AND ILLUSTRATOR AND A LIFE LONG RESIDENT OF WEST BERKELEY.

I WANT TO SPEAK IN FAVOR OF THE FILMMAKERS. JUST AS A LIFE LONG RESIDENT OF BERKELEY AND A RESIDENT OF WEST BERKELEY ARTS STRICT, FILMMAKERS AND SOUND ARTISTS HAVE ALWAYS BEEN A PART OF OUR COMMUNITY.

THEY HAVE HELPED CREATE THE ARTS FABRIC IN BERKELEY AND THEY ARE PART OF HOW WE ARE KNOWN, NOT JUST NATIONALLY BUT INTERNATIONALLY.

WE HAVE INTERNATIONALLY-KNOWN FILMMAKERS RIGHT IN OUR CITY AND THAT IS PART OF OUR CITY'S CHARACTER.

AND IT ALWAYS HAS BEEN.

I REALIZE THAT DEVELOPERS WILL ALWAYS WANT TO EARN MORE REVENUE FROM THEIR SPACES BUT THERE'S A REASON THESE RESTRICTIONS EXIST. IT ALLOWS ARTISTS TO WORK IN PLACES THEY WOULDN'T OTHERWISE HAVE, AND CREATE THE CHARACTER OF OUR CITY WE REALLY SHOULD BE PROTECTING, IT'S VERY VALUABLE AND IMPORTANT.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

THANK YOU ALL SO MUCH.

WONDERFUL.

HAVE WE DONE EVERYONE IN PERSON?

WE WILL MOVE ONLINE NOW, THE FIRST PERSON PATIENTLY WAITING ONLINE, LISA BULLWINKLE, I WILL ALLOW YOU TO TALK NOW.

YOU CAN UNMUTE YOURSELF.

>> HI.

I'M LISA BULLWINKLE HERE SPEAKING AS A PRIVATE CITIZEN EVEN THOUGH I'M ON THE ART COMMISSION AND HAVE CHAIR IT HAD FOR A FEW YEARS, I WANT TO COMMEND RICK AUERBACH AND JOHN KIRL FOR THEIR

EXTREMELY WONDERFUL WORK GETTING ARTISTS HOUSED AND FED AND  
ACKNOWLEDGED IN THE CITY OF BERKELEY.

THE BIG PICTURE HERE THIS IS ABOUT GENTRIFICATION.

IT'S LIKE DEATH BY A THOUSAND CUTS TO OUR ARTISTS IN THE CITY.

AND I HAVE WATCHED SO MANY OF OUR ART COLLECTIVES AND BUILDINGS  
GET WIPED OUT AND DESTROYED AND THE DEVELOPMENT COME IN AND PUT  
IN R&D THAT WE DON'T REALLY NEED.

WHAT WE NEED ARE SPACES FOR ARTISTS TO DO THEIR JOBS AND KEEP US  
THE VIBRANT ART COMMUNITY.

THE STAFF HAS MADE A TERRIBLE ERROR IN THEIR LACK OF FORESIGHT  
IN THE DEFINITION.

AND I THINK RICK IS RIGHT ON IN THAT WE REALLY NEED TO BE A  
LITTLE BROADER HERE.

THE ARTS ARE IN TROUBLE, HELP US, KEEP THEM, SAVE THEM.

WE WANT BERKELEY TO BE VIBRANT, NOT JUST HAVE R&D EVERYWHERE IN  
TOWN.

THANK YOU.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> WELL SAID, WELL SAID.

>> Vice Chair Gaffney: ALL RIGHT.

WE WILL NOW -- KELLY HAMMARGREN, YOU ARE UP NEXT.

YOU SHOULD BE ABLE TO TALK NOW.

>> THANK YOU.

AND I REMEMBER WHEN THIS BUILDING CAME TO COUNCIL TO TURN IT INTO R&D AND IT'S REALLY SUCH A GREAT TRAGEDY BECAUSE BERKELEY WAS, AT ONE TIME THE FILM CENTER.

IF YOU GO THE BROWSER GOOGLE THERE ARE STILL SITE THAT'S NAME BERKELEY AS AN ARTS CENTER BUT THAT'S REALLY DISAPPEARING.

I THINK FOR ALL THESE EMPTY SPACES YOU NEED TO LISTEN TO THE PERSON WHO SPOKE EARLIER ABOUT HER RENT BEING TRIPLED FOR A SPACE IN THAT BUILDING.

I JUST THINK THERE'S A LOT OF GAMING AND MANIPULATION GOING ON HERE, AND THIS IS REALLY SO SAD AND I WISH YOU WOULD STAND ON THE SIDE OF RECOGNIZING FILM AS ART, THANK YOU FLT.

>> Vice Chair Gaffney: THANK YOU SO MUCH.

>> YEAH, AND I GUESS I COULD SAY THAT, AS THE FORMER EXHIBITIONS CHAIR FOR THE NORTHERN CALIFORNIA WOMEN'S CAUCUS FOR ART, WE CONSIDER FILM ART.

>> Vice Chair Gaffney: THANK YOU, KELLY.

APPRECIATE IT.

ALL RIGHT, UP NEXT WE HAVE BARBARA BOWMAN.

ALL RIGHT, YOU SHOULD BE ALLOWED TO TALK NOW IF YOU UNMUTE YOURSELF.

>> THANK YOU, CAN YOU HEAR ME?

>> Vice Chair Gaffney: A LITTLE TOO LOUDLY.

>> OKAY.

MY HUSBAND'S COMPUTER IS ON, WE WILL TURN IT OFF.

>> Vice Chair Gaffney: IT'S STILL A LITTLE LOUD, YOU CAN TALK A LITTLE QUIETER.

>> ARE YOU THERE?

>> Vice Chair Gaffney: YOU'RE GOOD, WE CAN DEFINITELY HEAR YOU.

>> I LIVE ON TENTH STREET A FEW BLOCKS FROM THE FANTASY BUILDING.

I'M HERE TO CONTEST TO NOT BEING MUCH OF A FILM BUFF BUT I'M A FAN OF THE WEST BERKELEY PLAN THAT PROTECT THESE TENANTS.

WRITTEN SUBMISSIONS AND I NEED NOT REITERATE THEM.

BUT I WAS THINKING TODAY ABOUT THIS AND I WAS REMINDED THE LAST TIME I ADDRESSED THE ZAB MEETING DEMOLISHED HOUSES --

NEGLECTED TO GET A PERMIT BASED ON THE IDEA IT IS EASIER TO GET FORGIVENESS THAN PERMISSION.

I COMMENTED THEN IF BERKELEY HAD A THREE-STRIKES LAW, WAREHAM WOULD HAVE BEEN BANNED FROM BERKELEY BY THEN.

IT NEVER OCCURRED TO ME THIS FEELS LIKE A ANOTHER WEST BERKELEY DEMOLITION TO ME.

EXCEPT THEY ACTUALLY ASKED PERMISSION THIS TIME AND THE TENANTS ARE ABLE TO FIGHT BACK.

I REALLY HOPE YOU WILL DECIDE IN FAVOR OF THE FILMMAKERS AND I ASK THAT YOU GIVE A FIRM NO TO THIS REQUEST FOR A REZONING.

THANK YOU, THAT'S IT.

>> Vice Chair Gaffney: THANK YOU SO MUCH, BARBARA.

ALL RIGHT.

LOOKS LIKE WE HAVE ONLY ONE MORE HAND.

IF YOU WANT TO SPEAK PLEASE RAISE YOUR HAND NOW.

IF NOT, WE JUST HAVE ONE MORE.

AND SO DAVID, I'M GOING TO ALLOW YOU TO TALK NOW.

>> I'M DAVID BOWMAN AND I LIVE DOWN THE STREET ON TENTH --

[BREAKING UP]

>> Vice Chair Gaffney: DAVID, CAN I STOP YOU, IT'S VERY LOUD BUT

I DON'T THINK IT'S YOU, IT'S SOMETHING WRONG WITH OUR SOUND.

WE WILL PAUSE AND RESTART IT.

>> I'M DAVID BOWMAN AND I LIVE DOWN THE STREET --

>> Vice Chair Gaffney: HOLD ON, DON'T TALK FOR A SECOND, IT'S

VERY LOUD.

>> I'M SORRY?

>> Vice Chair Gaffney: JUST A SECOND.

WE ARE HAVING SOME TECHNICAL DIFFICULTIES.

I WILL MUTE YOU FOR A SECOND BUT I PROMISE WE WILL BE HEARING

FROM YOU IN A SECOND.

>> THANKS.

>> Vice Chair Gaffney: OKAY, DAVID WE ARE GOING TO HAVE YOU

SPEAK BUT SPEAK QUIETER THAN YOU THINK WE ARE HAVING TECHNICAL

DIFFICULTIES, TRY TO SPEAK A LITTLE SOFTER, I WILL TELL YOU IF

-- SO GO FOR IT AND I WILL LET YOU KNOW.

WE RESTARTED YOUR TIME.

>> HOW ABOUT NOW, IS THIS BETTER?

>> Vice Chair Gaffney: GO A LITTLE CLOSER TO THE MIC NOW, SORRY.  
SPEAK A LITTLE LOUDER, I'M SORRY.

>> I'M DAVID BOWMAN, I LIVE DOWN THE STREET FROM TENTH STREET.

>> Vice Chair Gaffney: GO AHEAD.

>> I'M DAVID BOWMAN, I LIVE DOWN THE STREET ON TENTH STREET FROM  
FANTASY, I WAS INVOLVED WITH RICK A LITTLE BIT -- WEST  
BERKELEY PLAN, I WOULD JUST LIKE TO SAY [ INDISCERNIBLE ]  
IT'S PROTECTED BY THE WEST BERKELEY PLAN -- BUT I SPENT  
SEVERAL [ INDISCERNIBLE ]  
IT WAS GREAT TO HAVE THAT KIND OF CAMARADERIE.

[ INDISCERNIBLE ]

SOUNDS LIKE YOU NEED TO LOWER THE RENT SO WE CAN LET SOME MORE  
PEOPLE IN THERE, WHY DRIVE THEM OUT?

GOOD LUCK.

THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT, THANK YOU, DAVID.

ALL RIGHT, IT LOOKS LIKE WE HAVE ONE MORE LEFT, HOPEFULLY.

OUR SOUND SYSTEM IS OKAY?

I DON'T THINK THAT WAS US NECESSARILY.

SO CAMERON WOO, WE WILL ALLOW YOU TO TALK RIGHT NOW, LET'S SEE  
IF THIS WORKS.

CAMERON?

>> GOOD EVENING, HOW AM I DOING, CAN YOU HEAR ME?

>> Vice Chair Gaffney: GREAT, THANK YOU.

>> GREAT.

MY NAME IS CAMERON WOO, I'M ON THE CIVIC ARTS COMMISSION IN THE D.R.C.

I SPEAK TONIGHT AS A PRIVATE CITIZEN REPRESENTING ONLY MYSELF. I'M A LONG-TIME WEST BERKELEY RESIDENT LIVING A FEW BLOCKS AWAY FROM THE SAUL ZAENTS BUILDING CURRENTLY HOUSING A LARGE NUMBER OF FILMMAKERS, AS YOU KNOW.

I WOULD LIKE TO ADD MY SUPPORT KEEPING THEM THERE BY NOT ALLOWING THIS TO CHANGE TO R&D, LAB AND OFFICE SPACE.

THE FRUITS OF THESE CREATIVE FILMMAKERS HAVE WON NUMEROUS AWARDS.

I FEEL THEIR PRESENCE IN BERKELEY IS ESSENTIAL TO THE BAY AREA'S CREATIVE COMMUNITY.

BERKELEY AS A HAVEN FOR THOUGHTFUL SOCIALLY RELEVANT FILM MAKING.

THERE'S CURRENTLY A GLUT OF R&D SPACE IN THE BAY AREA.

BERKELEY IS BETTER OFF HOLDING ONTO THIS, RATHER THAN CONTINUING TO THIS GLUT.

PLEASE THINK OF THESE FACTORS WHEN CONSIDERING YOUR VOTE TONIGHT.

THANK YOU.

>> Vice Chair Gaffney: THANKS, CAMERON AND EVERYONE ELSE WHO SPOKE.

LOOKS LIKE WE HAVE NO MORE HANDS ON LINE.

WITH THAT I WILL MAKE A MOTION TO CLOSE THE PUBLIC HEARING AND WE WILL TAKE A VOICE VOTE.

SO ALL THOSE IN FAVOR OF CLOSING THE PUBLIC HEARING, SAY AYE.

ALL THOSE OPPOSED SAY NAY.

ALL RIGHT, THE PUBLIC HEARING PORTION IS OFFICIALLY CLOSED.

IT IS ALSO IS ABOUT 9:00 P.M. AND WE WILL NEED TO TAKE A TEN MINUTES CAPTIONER'S BREAK BECAUSE WE ARE LIVE CAPTIONED AND THEY NEED TO GET RESTED FOR A SECOND.

WE WILL MEET HERE AT 9:10 AND PICK UP RIGHT WHERE WE LEFT OFF.

SO THANK YOU, EVERYONE.

>> Vice Chair Gaffney:

>> Vice Chair Gaffney: IF EVERYONE CAN WRAP UP WHAT THEY ARE TALKING ABOUT AND GET BACK TO THEIR SEATS WE WILL GET STARTED.

CALLING THE MEETING TO ORDER FELLOW COMMISSIONERS. COME BACK.

ALL RIGHT.

WONDERFUL.

THANK YOU ALL FOR YOUR PATIENCE DURING OUR CAPTIONER'S BREAK.

SO AGAIN, NOW WE CLOSED THE PUBLIC HEARING AND WE HAVE HEARD FROM ALL OF THE PUBLIC.

WE CAN START DELIBERATIONS HERE, WHICH I KNOW THERE ARE A LOT.

SO WHO WOULD LIKE TO KICK US OFF?

YEP?

COMMISSIONER YUNG?

>> B. Yung: IT'S SO WONDERFUL THAT WE IN THE CITY OF BERKELEY ARE ABLE TO AIR OUT SO MANY OF OUR DECISION-MAKING PROCESSES IN DISCRETIONARY PUBLIC FORUMS, WHAT A BETTER WAY TO LEARN ABOUT CIVICS.

I ALSO, SO I MENTIONED THE FIFTH AMENDMENT EARLIER, THERE'S A LOT OF THINGS GOING ON IN THERE.

ONE IS A RIGHT TO DUE PROCESS IN REGARDS TO LIFE, LIBERTY OR PROPERTY.

THAT PROPERTY PIECE IS THE BASIS FOR HOW APPEALS HEARINGS HAPPEN.

SO THAT IS TO SAY, IF YOU KNOW, SOMEONE WERE TO CHALLENGE THE LEGALITY OF THE ZONING ADMINISTRATOR'S DECISION, THEY MUST FIRST EXHAUST THEIR ADMINISTRATIVE REMEDIES, IN THIS CASE, THE APPEAL. THE APPEAL IS A REVIEW OF THE INITIAL DECISION.

SO THE QUESTION BEFORE US TONIGHT ARE, GIVEN THE EVIDENCE BEFORE US, WHAT IS THE REVIEW OF THE ORIGINAL DECISION?

MY OWN READING, MY OWN FINDING IS THAT I WOULD STAND BEHIND THE ORIGINAL DECISION GIVEN THE LANGUAGE OF THE ORDINANCE.

THE FACTS BEFORE US AND TO THE BEST THAT WE CAN, OUR APPLICATION TRUE TO THE LANGUAGE OF THE ORDINANCE.

I'LL POINT OUT KIND OF AN APPROACH TO HOW I LANDED THERE.

SO YOU KNOW, THE APPEAL BRINGS UP MANY POINTS.

I THINK THE ONE THAT'S MOST RELEVANT HAS TO DO WITH DETERMINING WHAT USE IS PRESENT.

SO YOU KNOW, STATUTORY INTERPRETATION, LET'S START TOP TO  
BOTTOM, RIGHT?

AN ESTABLISHMENT, ARTS/CRAFT STUDIO IS AN ESTABLISHMENT ENGAGED  
IN THE CREATION OF ARTS OR CRAFTS THAT REQUIRES ARTISTIC SKILL.  
IT WAS MENTIONED EARLIER THAT FILM MAKING, ART, IS MUCH MORE  
POWERFUL THAN GOVERNMENT.

I COMPLETELY AGREE, BECAUSE IN THIS CASE, YOU WOULD BE SCANT TO  
WANT TO AFFORD GOVERNMENT THE ABILITY ON ITS OWN WHAT AND WHAT  
DOES NOT REQUIRE ARTISTIC SKILL.

I'M HESITANT TO MAKE THAT JUDGMENT CALL HERE.

I THINK THERE ARE MANY WIDE RANGE OF THINGS.

ANY TYPE OF ANALYTIC WORK ANYONE CAN JUSTIFIABLY SAY REQUIRES  
ARTISTIC SKILL.

WITH THAT AMBIGUITY BEING STATED LET'S MOVE FORWARD.

SUCH ESTABLISHMENT MAY PARTICIPATE IN THE STUDIOS BUT [READING  
RAPIDLY]

FOR INCIDENTAL SELL OF GOODS MADE ON SITE.

YOU HAVE TWO VERBS, SHALL OR MAY.

MAY IS LESS BINDING, MORE OPEN-ENDED.

SO OPTION TO ENGAGE IN PERIODIC SALES --

THEY ALSO INCLUDE REHEARSAL SPACES NOT DESIGNED FOR PUBLIC  
PERFORMANCES.

THAT SEEMS TO BE THE CASE HERE FROM MY UNDERSTANDING.

AND THEN THERE'S A LIST OF EXAMPLES. OF INDIVIDUALS TYPICALLY ENGAGED IN THIS WORK THEY INCLUDE A LONG LIST OF TYPES OF PROFESSIONS INCLUDING FILMMAKERS AND PHOTOGRAPHERS.

THIS USE EXCLUDES ARCHITECTURAL LANDSCAPE SERVICES, INDUSTRIAL OR GRAPHIC DESIGN, COMPUTER SYSTEM, DESIGN SERVICES AND OTHER COMMERCIAL ACTIVITIES NORMALLY CONDUCTED IN AN OFFICE ENVIRONMENT.

FINALLY, THIS IS CONSIDERED A PROTECTED NON-INDUSTRIAL USE PROVIDED THAT THE USE WAS A LEGALLY ESTABLISHED, AS OF JULY 6, 1989 AND B, EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT, MEDIA PRODUCTION IS NOT A PROTECTED USE.

A FEW KEY THINGS, THE FIRST ONE, EXAMPLES OF INDIVIDUALS WHO ENGAGE IN THIS TYPE OF WORK.

A FILMMAKER IS AN EXAMPLE.

WE KNOW GIVEN THE EVIDENCE BEFORE US THAT THE MUSIC LABEL AND FILM PRODUCTION WAS AN INTEGRATED BUSINESS ENTERPRISE OF WAREHOUSES, OFFICE AND RECORDING STUDIOS. IT WASN'T JUST FILMMAKERS. THERE WAS A RANGE OF ACTIVITIES HAPPENING AT THE SITE WHICH INCLUDED OFFICE AND WAREHOUSE TYPE ACTIVITIES.

ADDITIONALLY, WE HAVE THE FACT THAT THE LAST CLAUSE OF THE DEFINITION STATES THAT AND THE USE EXISTS AS A SINGLE STAND-ALONE USE OR COMBINED WITH RESIDENTIAL LIVE/WORK UNIT OR DISJUNCTIVE SO EITHER/OR.

DID IT EXIST AS A SINGLE STAND-ALONE USE?

OR IS COMBINED WITH RESIDENTIAL USE IN A LIVE/WORK UNIT.

AS FAR AS WE KNOW WITH THE EVIDENCE BEFORE US TONIGHT, THERE WAS NO RESIDENTIAL.

MEDIA PRODUCTION IS NOT A PROTECTED USE.

IT ALSO FINALLY EXPLICITLY EXCLUDES MEDIA PRODUCTION.

SO GIVEN THE, THIS IS GENUINELY I WOULD SAY AMORPHOUS DEFINITION THAT WOULD WARRANT CAREFUL CONSIDERATION.

BUT GIVEN THE WEIGHING OF THE TWO DEFINITIONS, MY CONCLUSION IS AS FOLLOWS:

THE USE AS WE KNOW IT AS WAS ESTABLISHED IN 1989 IS ENTIRELY ENCOMPASSED WITHIN THE DEFINITION OF MEDIA PRODUCTION.

WHAT WAS OCCURRING AT THAT RELEVANT POINT IN TIME WAS PARTIALLY COVERED BY THE ARTS/CRAFT STUDIO, THEREFORE I WILL FIND AND AGREE WITH STAFF'S DETERMINATION.

>> Vice Chair Gaffney: COMMISSIONER SANDERSON?

>> D. Sanderson: WELL HERE GOES MY POINT.

I WAS AROUND WHEN WE DID THE DEFINITIONS, SO WERE A FEW OF YOU IN THIS ROOM.

WE ARE ALL OLD NOW.

BUT I THINK IT'S CONFUSING.

IT IS, FIRST OF ALL, ARTS AND CRAFTS STUDIO MENTIONS FILM MAKING.

I DON'T THINK YOU CAN THEREFORE CONCLUDE THAT MEDIA PRODUCTION IS NOT ALSO ARTS AND CRAFTS. THAT'S MY FIRST DILEMMA.

AND SECOND, I BELIEVE THE SPACES, THESE WORK SPACES YOU SHOWED ON THE FLOOR PLAN WERE -- OH, SORRY.

I WENT THE WRONG WAY.

THIS IS MY WAY.

WERE 200 SQUARE FEET, 230 SQUARE FEET.

THESE ARE A TENANT SPACE.

IN THE OTHER BUILDING WHOSE NAME I FORGOT, RICK MENTIONED OR SOMEBODY MENTIONED, SAW-TOOTH BUILDING, THERE ARE 40-SOME-ODD INDIVIDUAL SPACES IN THERE.

AND EACH OF THOSE SPACES HAD TO GET A BUSINESS LICENSE TO OPERATE AS AN ARTS/CRAFT STUDIO IN THAT SPACE.

SO THEY ARE FREE-STANDING IN THAT THEY ARE SELF CONTAINED.

WE'RE NOT TALKING ABOUT THE WHOLE BUILDING. THE WHOLE BUILDING HAS MULTIPLE USES IN IT.

WE ARE TALKING ABOUT THESE THREE TENANT SPACES. AND SO, I THINK, I HATE THIS, THIS IS AWFUL TO SAY, BUT IT SEEMS TO ME THEY ARE STAND-ALONE.

AND THAT THERE IS SOME OVERLAP.

I LOOKED AT THE DEFINITION FOR RESEARCH AND DEVELOPMENT AND IT'S ENTIRELY COMMERCIAL, IT HAS NOTHING TO DO WITH ART ANYWHERE.

I THINK AT THE TIME WHEN WE DID THE ARTS/CRAFTS DEFINITION, WE ADDED THE MEDIA DEFINITION, MEDIA PRODUCTION DEFINITION BECAUSE THERE WAS NO SUCH THING IN THE CODE.

WELL, WHAT DO I GO GET A BUSINESS LICENSE FOR IF IT'S NOT EVEN A RECOGNIZED USE IN THE CODE.

SO I'M VERY AMBIVALENT.

I SEE MORE OVERLAP BETWEEN MEDIA PRODUCTION AND ARTS/CRAFTS STUDIOS THAN MY COLLEAGUE DOES.

SO I'M STILL SITTING ON THE FENCE AND I'M GOING TO LISTEN TO WHAT OTHER PEOPLE HAVE TO SAY.

I DID HAVE ONE -- CAN I ASK A QUESTION?

>> Vice Chair Gaffney: CAN WE ASK A QUESTION WITHOUT REOPENING THE PUBLIC HEARING?

>> Clerk: YOU CAN ASK A QUESTION OF STAFF.

>> D. Sanderson: I WILL GO TO STAFF THEN AND NOT THE OWNER.

THE BUSINESS LICENSES LAST ISSUED FOR THESE THREE TENANT SPACES, CAN YOU TELL ME WHAT THEY ARE?

HAS ANYBODY LOOKED AT THE BUSINESS LICENSES FOR THESE LAST THREE TENANT SPACES?

AND THAT WILL TELL YOU THE LAST LEGAL USE.

>> SO WE DID DO PRETTY COMPREHENSIVE RESEARCH AND I DON'T HAVE THAT WITH ME HERE TONIGHT.

I THINK THE ISSUE AT HAND IS WHAT WAS THE ESTABLISHED USE IN THAT DATE IN 1989.

AND THE PERMITS FOR BOTH THE BUILDING, THE ORIGINAL CONSTRUCTION OF THE BUILDING AND THE ADDITION WERE -- SORRY, I'M GOING TO REFER TO THE STAFF REPORT.

>> D. Sanderson: WHERE ARE YOU?

>> I'M LOOKING AT PAGE 8.

>> D. Sanderson: OKAY.

>> SO IN 1971 IT CONTAINED THREE RECORDING STUDIOS. THEN EXPANDED INTO FILM PRODUCTION, KNOWN AS FANTASY FILMS.

THEN SAUL ZAENTS MEDIA CENTER OPENED IN 1980 WHICH HAD A MEDIA PRODUCTION CENTER AND FOURTH RECORDING STUDIO.

SO DURING THE TIME OF CONSTRUCTION IT WAS, AND THE SUBSEQUENT EXPANSIONS, IT WAS MEDIA PRODUCTION.

ADDITIONAL BUSINESS LICENSES WERE, STARTED TO BE GRANTED IN WHERE DID IT GO?

STARTED IN 1998, AFTER THE 1989 CUT-OFF FOR DETERMINING WHETHER OR NOT THE USE WAS PROTECTED.

>> D. Sanderson: THANK YOU, I'M THINKING.

GO ONTO SOMEONE ELSE.

>> Vice Chair Gaffney: OKAY, COMMISSIONER O'KEEFE?

>> S. O'Keefe: SO I THINK WE CAN ALL AGREE THERE'S AMBIGUITY HERE.

IT SAYS THAT ART USES ARE PROTECTED, MEDIA PRODUCTION IS NOT. THEN WHAT IS ART.

THE IDEA THAT THE GOVERNMENT CAN SAY WHAT AND WHAT ISN'T ART IS WRONG AND I REJECT THAT.

I APPRECIATE A LOT OF THE ARGUMENTS HERE, WHAT I DO IS ART, WHY WOULDN'T YOU CONSIDER IT TO BE ART, I DO CONSIDER IT TO BE ART AND NO ONE SHOULD HAVE TO DEFEND THAT.

NO ARTIST SHOULD HAVE TO DEFEND THEIR WORK AS ART.

I REJECT THE IDEA WE HAVE TO DRAW A BOUNDARY AROUND THAT, ESPECIALLY WHEN THERE'S AMBIGUITY.

SO, THERE'S THE SPIRIT OF THE LAW AND THE LETTER OF THE LAW, OKAY.

I'M ACTUALLY USUALLY A LETTER OF THE LAW PERSON, I'M KIND OF INTO THAT, AS I MENTIONED IN THE LAST ITEM.

BUT IN THIS CASE, THE LETTER OF THE LAW IS NOT VERY HELPFUL.

I THINK THE LETTER OF THE LAW IS KIND OF RIDICULOUS, HONESTLY, AND IT CERTAINLY ALLOWS ROOM FOR US TO KIND OF LOOK ELSEWHERE.

SO LET'S LOOK AT THE SPIRIT OF THE LAW.

THE SPIRIT OF THE LAW SAYS THAT ESSENTIALLY YOU CAN'T KICK OUT ARTISTS. THAT'S THE SPIRIT, THAT'S WHY WE HAVE THE PROTECTED USE CLAUSE.

PLEASE DON'T KICK OUT ARTISTS, WE WANT TO PROTECT THAT.

THEY AREN'T SUPPORTED BY THE MARKET ECONOMY VERY WELL, THEY ARE VALUABLE IN OTHER WAYS, KEEP THEM.

THAT'S THE SPIRIT OF THE LAW.

SO I DO THINK THAT, WELL, STAY WITH ME, DON'T GET TOO EXCITED.

I DO THINK THIS IS A PROTECTED USE.

I WOULD ABSOLUTELY SAY THIS IS AN ARTS/CRAFTS STUDIO USE.

I'M NOT SURE ABOUT THE STAND-ALONE USE ISSUE.

THAT'S ALSO PART OF THE LAW AND THAT IS LESS AMBIGUOUS.

I WAS GOING TO SAY YES ON THAT.

I WANT THE SPIRIT OF THE LAW TO BE EVOKED BUT I NEED TO FIND  
LEGAL JUSTIFICATION.

SO I'M VERY OPEN TO ARGUMENTS THIS WAS A STAND-ALONE USE.

IF YOU DECIDE THAT --

>> D. Sanderson: THE REASON I THINK THESE ARE STAND-ALONE USES,  
IF YOU LOOK AT THE SAW-TOOTH BUILDING, WHICH HAS I DON'T KNOW  
HOW MANY ARTISTS IN IT, THEY HAVE INDIVIDUAL SPACES AND THEY  
HAVE SOME SHARED SPACES. BERKELEY WENT THROUGH A BIG TO-DO ABOUT  
2010 OR SO BECAUSE A LOT OF THOSE PEOPLE, AND MOST PEOPLE IN  
WEST BERKELEY HAD NEVER GOTTEN BUSINESS LICENSES.

SO THERE WAS A TO-DO, IF YOU WANT TO KEEP THIS SPACE, YOU HAVE  
TO HAVE A BUSINESS LICENSE THAT SAYS YOU ARE AN ART/CRAFT  
STUDIO, SO EACH ONE OF THOSE ENTREPRENEURS IN THAT BUILDING HAD  
TO GET THEIR OWN INDIVIDUAL BUSINESS LICENSE FOR THAT SPACE.

THEY DIDN'T GET A BUSINESS LICENSE FOR THE WHOLE BUILDING.

BECAUSE I THINK THERE MAY HAVE BEEN SOME IN THERE THAT WEREN'T  
ARTS AND CRAFTS, THEY WERE OTHER THINGS.

SO I THINK I'M USING THAT LOGIC TO SAY STAND-ALONE.

IT DOESN'T MEAN IT HAS TO BE A LITTLE STAND-ALONE TINY BUILDING.

IF IT DID, WE WOULD HAVE NO ARTS AND CRAFTS STUDIOS, VERY FEW.  
BUT IF WE GAVE BUSINESS LICENSES TO ARTS AND CRAFTS STUDIOS IN  
THE SAWTOOTH BUILDING AND WE LICENSED THEM AS ART AND CRAFTS  
STUDIOS, SO THEY WERE, IT WAS THE INDIVIDUAL USE IN THAT SQUARE  
FEET THAT WAS THE USE WAS ESTABLISHED.

AND SO --

>> S. O'Keefe: SORRY, CAN I ASK, IS THERE PRECEDENT FOR ONE OF  
THOSE BUSINESSES BEING RECOGNIZED AS A PROTECTED USE BY ITSELF?

>> D. Sanderson: YEAH.

>> S. O'Keefe: DO WE HAVE THAT AND WAS IT CHALLENGED?

>> D. Sanderson: IT WASN'T CHALLENGED.

IT'S THE WAY THE PLANNING DEPARTMENT INTERPRETED THE ORDINANCE.

>> S. O'Keefe: IN THE CONTEXT OF PROTECTED USE?

>> D. Sanderson: YEAH.

WE SAID YOU'RE NOT PROTECTED, UNLESS YOU HAVE A BUSINESS LICENSE  
ESTABLISHING THIS AS A LEGAL USE.

AND YOU KNOW, PEOPLE HAD BEEN THERE FOR DECADES. BUT THAT'S WHY  
I THINK IT APPLIES.

WE CHANGE USE, WE DON'T APPLY IT TO THE WHOLE BUILDING. WE APPLY  
IT TO THAT CHUNK OF REAL ESTATE.

THAT LITTLE SPACE, SO.

>> S. O'Keefe: THAT MAKES A LOT OF SENSE TO ME.

I'M ALMOST CONVINCED.

I'M GOING TO KEEP LISTENING.

>> Chair Duffy: NOT TO TALK GENERALLY BUT TO TALK ABOUT STAND-ALONE USE I WOULD CONCUR IN THAT AS WELL.

THAT'S ONE OF THE MANY PROBLEMATIC PIECES OF TRYING TO DEFINE AND CATEGORIZE WHAT CREATIVE CLUSTERS OF AMAZING CREATORS DO.

THERE'S NO SIMPLE WAY OF CODIFYING IT AND THAT'S THE DIFFICULTY HERE, BUT THAT STAND-ALONE USE, MY THOUGHT ALSO DOESN'T MEAN STAND-ALONE USE IN A STAND-ALONE BUILDING.

AND THAT ACTUALLY, IT IS ESSENTIAL FOR THE CREATIVE COMMUNITY TO CLUSTER AND TO FLEX AND TO BE VERY DIFFERENTIATED AND COLLABORATIVE IN THE MANY DIFFERENT WAYS THEY WORK AS INDIVIDUAL PEOPLE, EVEN UNDER ONE PARTICULAR LICENSE OR TEN PARTICULAR BUSINESS LICENSES.

SO THAT'S MY GENERAL TAKE TOO, I JUST APPRECIATE YOUR DEFINITION.

>> Vice Chair Gaffney: COMMISSIONER YUNG?

>> B. Yung: JUST A QUESTION FOR STAFF REAL QUICK.

DO WE KNOW WHAT, I MEAN I'M SURE THE ENTIRE ENTITLEMENTS PROCESS MIGHT HAVE BEEN DIFFERENT BACK THEN, BUT DO WE KNOW WHAT CONDITIONS/UNI PERMIT WERE APPLICABLE AT THAT TIME?

>> D. Sanderson: AT THE TIME WE HAD THIS DEFINITION AND THAT WAS IT.

THERE WAS NO OTHER LANGUAGE WE PULLED FROM SOMEWHERE.

IT UNFORTUNATELY -- WE HAD TO DO SOMETHING IN ORDER TO IMPLEMENT THE WEST BERKELEY PLAN.

WE COULDN'T JUST SAY LOOK, AND THIS WAS AS BEST WE COULD DO AT THE TIME OF THAT.

AND YOU KNOW, I CONFESS AT THE TIME IT DIDN'T, THERE WAS CLEARLY, THERE WERE CLEARLY OVERLAPPING ASPECTS.

BUT NOBODY COULD COME UP WITH ANY BETTER WORDS.

I MEAN WE PROBABLY COULD NOW IF WE THOUGHT ABOUT IT AND WE WATCHED HOW IT'S WORKED OVER TEN YEARS.

OR NOT WORKED.

I THINK IT'S INTERESTING THAT WE HAVEN'T, THIS HASN'T COME TO US BEFORE.

I MEAN I'VE ONLY BEEN HERE FOR A COUPLE YEARS, I GUESS.

I DON'T REMEMBER ANY OF THE ISSUE COMING UP OTHERWISE.

YOU ALL WHO HAVE BEEN ON THE ZAB LONGER WOULD REMEMBER THIS WHOLE DISCUSSION.

ANYWAY, I'M GOING TO SHUT UP.

>> Vice Chair Gaffney: NO, WE APPRECIATE YOUR FEEDBACK.

DOES ANYONE ELSE HAVE ANYTHING TO CONTINUE ADDING TO SUCH A COMPLEX DISCUSSION?

ON STAND-ALONE USES.

ARE WE ANYWHERE TOWARDS A MOTION?

COMMISSIONER YUNG, WOULD YOU LIKE TO GO?

>> B. Yung: I WOULD LIKE TO MAKE A MOTION TO UPHOLD THE APPEAL AS ITS PRESENTED.

>> S. O'Keefe: SECOND.

>> Vice Chair Gaffney: ALL RIGHT.

IS THERE ANY ALTERNATE MOTIONS, DISCUSSION ITEMS?

>> Chair Duffy: WE CAN DISCUSS THE MOTION.

>> Vice Chair Gaffney: COMMISSIONER YUNG?

>> B. Yung: JUST IN THE SPIRIT OF FLESHING OUT OUR LOGIC AS A BODY, SO THE POINTS REGARDING A STAND-ALONE ARE REALLY VALID. IT BEGS THE QUESTION.

SO IN THIS CASE, IF STAND-ALONE WERE TO NOT ENTAIL A SINGLE OPERATION ON A SITE, IMAGINE A STAND-ALONE BUILDING WITH ONE BUSINESS OPERATING IN IT, THEN I GUESS MY QUESTION IS, WHAT IS THE INTERPRETATION?

AND IT SOUNDS LIKE THE INTERPRETATION WE ARE LANDING ON IS A UNIT, YOU KNOW, FOR EXAMPLE, THE SAWTOOTH BUILDING.

HOWEVER, I STILL THINK THAT WOULD RENDER THE DEFINITION INTERNALLY INCONSISTENT IN THAT IT EXPLICITLY PERMITS LIVE/WORK, WHICH IN AND OF ITSELF IS A FORM OF A MIXED USE THAT SHARES THE SAME CONDITION SPACE.

SO I GUESS I'M STILL A LITTLE UNEASY WITH THE INTERPRETATION WE ARE LANDING AT.

>> D. Sanderson: LET ME ADD A LITTLE BACKGROUND ON LIVE/WORK. YOU CAN HAVE FOUR LIVE/WORK UNITS. EACH ONE GETS A SEPARATE BUSINESS LICENSE.

IT'S ABOUT WHO IS OPERATING IT AND WHAT ARE THEY DOING.

ANOTHER INDUSTRIAL CASES YOU HAVE A WHOLE BUILDING THAT'S, YOU KNOW, MAKING SAKE, I MEAN ALL OF THOSE PIECES OF ACTIVITIES ARE ALL AROUND MAKING SAKE.

SO THAT HAS A MANUFACTURING USE.

THAT'S ESTABLISHED ON THAT SITE.

SO LIVE/WORK, IT'S THE WORK PART THAT I THINK IS WHY IT WAS BROUGHT IN HERE AND THERE ARE SEVERAL PLACES WHERE LIVE/WORK HAS TO BE AN ARTS AND CRAFTS STUDIO.

YOU KNOW, WITH ALL THE BEST INTENTIONS TO PROTECT ARTS AND CRAFTS STUDIOS, IN ESSENCE TO TRY TO CHANGE THE COMPETITIVE RENTS OF ARTS AND CRAFTS STUDIOS VERSUS R&D, IT WAS AN EFFORT TO TRY TO PREVENT THE ARTS/CRAFTS STUDIOS FROM BEING SWALLOWED UP BY R&D WHICH AT THE TIME THERE SEEMED TO BE A BOTTOMLESS DEMAND. I'M NOT SURE THAT'S STILL TRUE ANY MORE.

BUT I THINK THE STAND-ALONE -- I MEAN, LAND USE IS ALL ABOUT WHO IS DOING WHAT, WHERE.

I DON'T CONTROL THE GUYS ACROSS THE HALL WHO MAY BE MAKING WIDGETS THAT ARE UGLY.

BUT I CAN CONTROL, IF I'M THE ARTIST, I CAN CONTROL WHAT HAPPENS IN MY SPACE.

SO I'M VERY COMFORTABLE SAYING THAT IT GOES BY THE SPACE.

IT DOES NOT GO BY THE BUILDING.

BECAUSE WE HAVE MANY BUILDINGS THAT HAVE MULTIPLE USES IN THEM, AND EACH ONE GETS A SEPARATE BUSINESS LICENSE FOR THEIR USE.

SO I'M GOING TO SHUT UP AGAIN.

>> S. O'Keefe: I'LL JUST JUMP IN AND SAY THAT MAKES PERFECT SENSE.

YOU HAVE 100% CONVINCED ME.

I THINK THAT'S EXACTLY RIGHT.

>> B. Yung: I WILL ADD, THE ONLY REASON I BROUGHT THAT UP IS WHEN WE APPROVE LIVE/WORK UNITS WE LITERALLY HAVE DIAGRAMS THAT SHOW WHAT PERCENTAGE OF THE SQUARE FOOTAGE ARE LIVE AND WORK. YOU CAN CONSIDER LIVE/WORK SLASH ALL THIS I GUESS UNDER THE SAME USE OF ART/CRAFT, JUST FOR MY OWN --

>> D. Sanderson: YOU HAVE TO GET A BUSINESS LICENSE FOR THE WHOLE [ OFF MIC ]

>> B. Yung: OKAY, LAST QUESTION.

SORRY.

IF WE ARE LANDING AT THIS PLACE, YOU KNOW, I THINK ONE QUESTION THAT'S WORTH IT TO ADDRESS OR MAKE SURE WE ARE GIVING SUFFICIENT ATTENTION TO IS, SO IF THIS IS THE CASE, IN WHAT EXAMPLE WOULD THERE BE A MEDIA PRODUCTION USE?

SINCE ART/CRAFT STUDIO, THE VERY LAST SENTENCE SAID MEDIA PRODUCTION IS NOT A PROTECTED USE.

SO THESE THINGS ARE MUTUALLY EXCLUSIVE.

WHAT TYPE OF USE.

>> S. O'Keefe: CORPORATE TRAINING VIDEOS. RIGHT?

I ASKED THAT QUESTION.

CORPORATE TRAINING VIDEOS. I ASKED THAT QUESTION, AND THAT'S THE ANSWER.

I GUESS.

MEDIA WITH NO ARTISTIC VALUE, WHATEVER THAT MEANS, RIGHT?

IF YOU COULD ESTABLISH THAT.

>> D. Sanderson: IT'S HARD FOR ME TO EVEN IMAGINE THERE'S NO ARTISTIC VALUE IN A TRAINING VIDEO.

YOU KNOW.

I GUESS WHERE I AM ON THIS IS IN THE PAST, THE CITY, I WOULD SAY LEANED TOWARD R&D BECAUSE THAT'S WHAT WE THOUGHT WAS GOING TO BRING IN THE ECONOMIC BENEFIT TO WEST BERKELEY.

BUT IT'S REALLY, AND I DON'T KNOW HOW -- I THINK THERE ARE OVERLAPPING DEFINITIONS.

WHICH PUT US IN A BIND.

AND I THINK TO GO BACK TO THE PURPOSE, AS LAID OUT IN THE WEST BERKELEY PLAN, AS A WAY TO DEAL WITH THAT AMBIGUITY MAKES PERFECTLY GOOD SENSE TO ME.

AND THAT'S THE WEST BERKELEY PLAN WAS ABOUT PROTECTING CERTAIN USES AND NOT PROTECTING OTHER USES.

SO I WILL SUPPORT THE MOTION.

>> Vice Chair Gaffney: ALL RIGHT.

THIS HAS BEEN A VERY INTERESTING DISCUSSION.

SO I GUESS EVEN TO KIND OF CLARIFY, WE ARE SAYING THAT THERE WAS MORE THAN, THERE WERE MULTIPLE USES BACK WHEN 19, WHEN WAS THAT, THE YEAR THIS WAS ESTABLISHED?

SO WE ARE SAYING, THE ONLY JUST TO PLAY DEVIL'S ADVOCATE ON THAT IT IS KIND OF SAYING HERE IS ONE BIG COMPANY, AT LEAST BACK AT THAT TIME, RATHER THAN A SERIES OF SMALLER COMPANIES OR DIFFERENT USES.

>> D. Sanderson: NO, I MEAN, MY REMEMBER OF SAUL ZAENTZ STUDIO, IT WAS STILL CLUSTERS OF INDIVIDUAL ARTISTS. I THINK IT WAS ALWAYS THAT WAY.

SO THEN THE PRESSURE ON THESE DEFINITIONS CAME BECAUSE SOMEONE WANTED TO CONVERT SOME OF THAT SPACE TO SOMETHING THAT WAS NOT ART-RELATED.

AND THERE WAS THIS BIG DISPUTE BETWEEN R&D AND ART AND HOW DO YOU ALLOW SOME R&D TO COME IN WITHOUT ALLOWING IT TO TAKE OVER. SO THAT'S WHY YOU HAVE THE PERMIT STANDARDS, IF IT'S UP TO 20,000 SQUARE FEET, YOU CAN DO IT.

IF IT'S OVER, YOU NEED A USE PERMIT OR WHATEVER, WAS TO TRY TO STRIKE A BALANCE BETWEEN THOSE TWO COMPETING USES.

AND, ANYWAY.

>> Vice Chair Gaffney: THANK YOU, I REALLY APPRECIATE THAT CLARITY.

>> Chair Duffy: I WOULD JUST, AS THE MAKER OF THE MOTION, FIRST OF ALL, AND JUST SAY THANK YOU TO THE CREATIVE COMMUNITY IN WEST

BERKELEY FOR ALL THAT YOU HAVE DONE, MUCH OF WHICH I DON'T KNOW,  
SOME OF WHICH I DO.

AND I FEEL VERY PROUD OF YOUR WORK, YOUR CULTURE WORK, THE  
RELEVANCE OF YOUR WORK.

AND I, ASIDE FROM THE CODEFICATION OF WHAT YOU MIGHT DO OR NOT  
DO, I JUST WANT TO SAY I APPRECIATE BEING IN THE PRESENCE OF  
YOUR WORK.

I APPRECIATE THE VALUE OF YOUR WORK, AND SOME OF WHAT I HAVE  
SEEN.

I REALLY FEEL LIKE FOR A COMMUNITY LIKE YOURS TO CONTINUE TO BE  
AS INFLUENTIAL AND AS CREATIVE, IT'S ESSENTIAL THAT THE MIXING  
AND THE COLLABORATION AND THE AMBIGUITY AROUND WHAT WE DO IS HOW  
WE SUCCEED, YOU KNOW, AS A CREATIVE CULTURE-MAKING GROUP.

SO I JUST APPRECIATE WHAT YOU DO.

AND I THINK, I'M NOT CAUGHT IN THE WEEDS OF TRYING TO CODIFY  
WHAT YOU HAVE BEEN DOING ALREADY.

I BELIEVE FILM MAKING IS AN ART.

I BELIEVE YOUR WORK IS ART, AND I APPRECIATE YOUR WORK AS ART.

CODA SIDE, I JUST WANT TO SAY THAT.

AND THANK YOU.

>> S. O'Keefe: JUST TO COMMENT ON THE LAST COMMENT, ARTISTS ARE  
WHAT MAKE BERKELEY AMAZING MORE THAN ANYTHING ELSE.

SO THANK YOU.

.

>> Vice Chair Gaffney: WONDERFUL, WE ARE READY FOR A ROLL CALL VOTE.

>> Clerk: I HAVE A MOTION FROM CHAIRPERSON DUFFY AND COMMISSIONER O'KEEFE TO UPHOLD THE APPEAL AND DENY THE ADMINISTRATIVE USE PERMIT, FOR ZP 2023-0081.

WHEN I CALL YOUR NAME, PLEASE STATE YOUR VOTE.

ACTING CHAIRPERSON GAFFNEY?

>> Vice Chair Gaffney: YES.

>> Clerk: COMMISSIONER SANDER?

SON?

>> D. Sanderson: YES.

>> Clerk: COMMISSIONER YUNG?

>> B. Yung: NO.

IN THE MOST LOVING WAY POSSIBLE.

>> Clerk: COMMISSIONER O'KEEFE?

>> S. O'Keefe: YES.

>> Clerk: CHAIRPERSON DUFFY?

>> Chair Duffy: YES.

>> Clerk: THANK YOU.

JUST AS A REMINDER OF A QUORUM FOR A VOTE, THIS IS A COMMISSION OF NINE SEATS AND THERE'S ONE VACANCY.

THAT BRINGS US DOWN TO EIGHT.

THREE HAVE APPROVED LEAVES OF ABSENCES, THAT BRINGS US DOWN TO FIVE.

A QUORUM CONSTITUTES THREE.

>> D. Sanderson: SO WE HAVE A QUORUM BUT WE DON'T HAVE FIVE  
VOTES FOR ACTION.

>> Clerk: YES.

SO THE QUORUM BRINGS US DOWN TO THREE AND THE VOTES NEEDED FOR  
ACTION IS ALSO THREE.

>> Vice Chair Gaffney: ALL RIGHT.

SO, MOTION PASSES.

>> Chair Duffy: THREE IS A MAJORITY WITHIN FIVE.

>> Clerk: THAT IS CORRECT, THANK YOU.

>> Vice Chair Gaffney: ALL RIGHT.

SO YEAH, THE MOTION PASSES.

>> Clerk: IT IS APPEALABLE TO THE CITY COUNCIL.

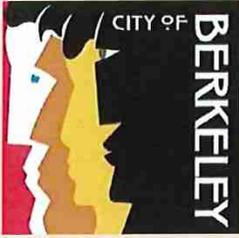
>> Vice Chair Gaffney: IT'S APPEALABLE TO THE CITY COUNCIL AS  
WELL.

AND YEAH, THANK YOU ALL FOR EVERYTHING.

AND THANK YOU FOR EVERYTHING YOU GUYS DO.

AND THANK YOU, EVERYONE ON THIS BOARD.

FOR THE GREAT DISCUSSION.



# Zoning Project Application

## Land Use / Zoning

Planning and Development

All new uses, structures, and modifications to structures in the City of Berkeley are required to be in conformance with the Zoning Ordinance.

Information on different types of permits can be found at the links below.

### Overview of the Permitting Process

[https://www.cityofberkeley.info/Planning\\_and\\_Development/Permit\\_Service\\_Center/Permitting\\_Process.aspx](https://www.cityofberkeley.info/Planning_and_Development/Permit_Service_Center/Permitting_Process.aspx)

### Types of Permits

[https://www.cityofberkeley.info/Planning\\_and\\_Development/Home/Types\\_of\\_Land\\_Use\\_Permits.aspx](https://www.cityofberkeley.info/Planning_and_Development/Home/Types_of_Land_Use_Permits.aspx)

### Zoning Project Submittal Requirements

<https://tinyurl.com/rahe8ld>

\*Dedicated Consultant Review involves a competitive bid process to select an outside consultant. Please note: The consultant costs are in addition to Use Permit fees already paid.

### Land Use / Zoning

1947 Center Street  
2nd Floor  
Berkeley, CA 94704  
Phone: 510-981-7410  
TDD: 510-981-7450  
[planning@cityofberkeley.info](mailto:planning@cityofberkeley.info)

(This box for staff use only.)	DATE STAMP HERE
ZP20 _____	
<input type="checkbox"/> Administrative Use Permit	<input type="checkbox"/> Variance
<input type="checkbox"/> Use Permit	<input type="checkbox"/> Modification of any of the Above
Zoning District(s): _____	
Intake Planner: _____	

### Project Information:

Project Address: 2600 Tenth Street Unit/Suite #: 105, 106, 201

Assessor Parcel Number: 054-1764-012-05

Project Description: Change of Use for 9,750 square feet located on the first and second floors at 2600 Tenth Street from Media Production to R+D.

Dedicated Consultant Review\* requested for UP(PH)?  (Check box if requested)

Property Owner's Name: 2600 Tenth Street, LLC.

Owner's Mailing Address: 1120 Nye Street, San Rafael, CA 94901

Phone #: 415-459-4964

Email: lvogel@warehousedevelopment.com

Applicant's Name (or enter "same"): Lisa Vogel

Applicant's Mailing Address: same

Phone #: same

Email: same

Under penalty of perjury, I certify that:

- (1) the application materials are true and complete to the best of my knowledge;
- (2) the attached paper and electronic copies of this application are the same; and
- (3) I agree to pay all expenses associated with this application.

(\*Owner's signature, or signed letter authorizing applicant to apply on owner's behalf, is required for all applications)

Applicant Signature: Lisa Vogel  
Printed Name: Lisa Vogel  
Date: 2-21-23

Owner Signature: Lisa Vogel on behalf of ownership  
Printed Name: Lisa Vogel  
Date: 2-21-23

(This page is for staff use only)

Zoning District(s):	
Zoning Section	Description
1. 23.____.____	UP/AUP to
2. 23.____.____	UP/AUP to
3. 23.____.____	UP/AUP to
4. 23.____.____	UP/AUP to
5. 23.____.____	UP/AUP to
6. 23.____.____	UP/AUP to
7. 23.____.____	UP/AUP to
8. 23.____.____	UP/AUP to
9. 23.____.____	UP/AUP to
10. 23.____.____	UP/AUP to



Permit Service Center  
Building and Safety Division  
1947 Center St. 3rd Floor  
Berkeley, CA 94704

# INVOICE

Date: 02/28/23

**Invoice #:** 525966

**Record #:** ZP2023-0031

**Bill to:**

**Address:** 2600 TENTH ST

AUP - Change of Use 9,750 square feet from Media Production to R+D; up to 9 tenant suites  
Lisa Vogel  
1120 Nye Street, suite 400  
San Rafael CA 94901

<b>Date Assessed</b>	<b>Invoiced Fee Item</b>	<b>Fee</b>	<b>Paid</b>	<b>Balance</b>
2/28/2023	Records Management AUP110	\$50.00	\$0.00	\$50.00
2/28/2023	AUP: Additional Administrative Use Permits AUP080	\$460.00	\$0.00	\$460.00
2/28/2023	Community Planning Fee CPF1	\$897.00	\$0.00	\$897.00
2/28/2023	AUP Base Tier 4 - Other activities NOT in or adjacent to a Residential District AUP040	\$5,520.00	\$0.00	\$5,520.00
<b>Totals:</b>		<b>\$6,927.00</b>	<b>\$0.00</b>	<b>\$6,927.00</b>

**Applicant Statement – Revised February 21, 2023**  
**ZP**

This Administrative Use Permit application is for the conversion of 9,750 square feet of space located on the ground floor and the second floor of 2600 Tenth Street, Berkeley from “Media Production” to “R&D” consistent with the provisions of Section 23.206.080 of the Berkeley Zoning Ordinance.

2600 Tenth Street is a 7 story building located in West Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The site comprises 114,998 SF and is zoned Mixed Use-Light Industrial (MU-LI). The tenants in the building have multiple uses including Office Use, R&D, Media Production and a Childcare facility.

The 9,750 square feet of Media Production space located on the ground floor and the second floor was formerly a recording studio and sound mixing facility (operating as Fantasy Studios) that was closed in September 2018.

Background

2600 Tenth Street was acquired from the original owner, the Saul Zaentz Corporation, in January 2007 by the current owner (2600 Tenth Street, LLC). At the time of purchase, the Fantasy Recording studios were fully leased out to a single tenant, The Concord Music Company. At the end of their lease in December 2007, Concord closed down their Northern California recording operations and consolidated all of their recording activity in Los Angeles.

Despite multiple attempts, no replacement tenants could be found to lease the main recording studios space. One stand-alone studio was leased out to a mastering company. In the absence of a replacement tenant, 2600 Tenth Street, LLC formed an operating entity in 2008, took on most of the former Concord studio employees, and offered the studios for rental on an hourly or daily basis. Significant investment had to be made in redecoration and refurbishment of the studio interiors and replacement of major items of equipment such as recording consoles.

Despite the extremely hard work of the staff and aggressive marketing on a national and local basis, the studio operation lost money every year. Rapid advances in digital recording technology over the last ten years made recording in simpler smaller studios, often at home, a much more cost-effective route for cost constrained artists. The massive disruption to the music industry of online music distribution resulted in record label budgets for recording studio time being slashed. Many of the larger local bands used their diminishing recording budgets to build their own recording studios. The decline in the Northern California market for full service, top-of-the-line recording studios was exemplified by the closure of The

Record Plant in Sausalito shortly after Concord Music Group shuttered their operations in Berkeley.

In mid-2018, after operating at a significant loss over each of the 10 previous years, the hard decision was made to close down the operation of Fantasy Studios. The studios closed for operations on September 15, 2018.

At the time of the closure, KTVU News and KRON News both interviewed recognized Bay Area music industry expert Joel Selvin. Quotes from the resulting news articles include:

*Joel Selvin, former San Francisco Chronicle music critic says the closure comes as no surprise as the recording industry has changed.*

*"The music industry has drifted away from the Bay Area since 1981 and the recording industry has drifted away from studios like Fantasy," said Selvin.*

*...Drifted away because of technology, says Selvin.*

*Artists can now record on a computer and bypass the expense of a recording studio.*

*By his estimation, Selvin said the peak for Fantasy came in the mid to late 1980s when recording stars such as Carlos Santana and Huey Lewis made music there.*

*"That place was humming. There were people in every studio," said Selvin. "It was like a playpen for musicians. That was '85, '86, '87. That was when the record industry was made of money."*

*"These giant recording studios that Fantasy was a prime example of are just dinosaurs. We're not going to see them again," said Selvin.*

*Selvin says part of the reason Fantasy is coming to an end is because of the new reality of the music industry.*

*"The entire technology around recording has changed so much in the last twenty years, for one thing it's all digital now so there's no tape, all of these recordings are done on computer files and the resolution maybe somewhat finer than the ones you get on your laptop but not so much to make that big a difference. Every laptop comes with automatic equipment that twenty years ago would've cost you a quarter million dollars to load in."*

The improvements and build-out inside the recording studios and mixing room are highly specialized and very specific to their original designed intent. The interiors comprise large, sound-isolated recording and mixing rooms with thick concrete walls and no windows. These large rooms are interspersed with multiple smaller support rooms including editing, tape transfer rooms and concrete echo chambers.

### Benefit of Conversion to R&D Use:

The application is to convert outdated Media Production space to R&D Use, a Permitted Use under section 23.206.080 of the Berkeley Zoning Ordinance. In 2021, a Zoning Certificate was issued for the conversion of 19,995 SF located on the first floor from Media Production to R&D. Therefore, the mechanism for this request to convert the additional 9,750 SF from Media Production to R&D is the Administrative Use Permit.

The creation of 9,750 square feet of R&D space within 2600 Tenth Street will allow new companies to join innovative Berkeley-born companies who have leased premises in the building such as Lucira Health. The building provides quick access to both the UC Berkeley campus and LBNL and is served by the West Berkeley Shuttle service to the Ashby BART Station.

The attached graphic of the ground floor and the second floor of 2600 Tenth Street shows the 9,750 square feet of current Media Production Use to be converted to R&D Use plus any adjacent uses.

One stand-alone recording studio at the corner of Tenth and Parker streets (2,158 square feet) that is also Media Production Use is currently under lease to a tenant. This area is not part of this Change of Use request and has been labelled accordingly on the exhibit. Any conversion of this space in the future would be part of a separate Change of Use application.

### Conformance with Zoning Ordinance

This application is consistent with the requirement under Berkeley Zoning Ordinance Section 23.406.030 Findings for Issuance and Denial and Conditions since the Change in Use 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. Indeed, as described above, the addition of much needed quality office space will provide a significant benefit to the City as it will allow start-up and growing companies to expand and remain in the City.

The proposed area for conversion to R&D Use is, as shown on the enclosed graphic, adjacent to existing office, R&D, child care uses on that floor of the building.

Since the area to be converted falls above our Zoning Certificate, the Required Permit per Table 23.206.080 is an Administrative Use Permit.

The use that is proposed to be changed (Media Production) is not one of the Protected Uses in the Mixed Use Light Industrial District specified in Section 23.206.050.

Conformance with the Requirements under Section 23.206.020 of the Berkeley Zoning Ordinance

**1. The proposed change of use is consistent with the purposes of the MU-LI District laid out in 23.206.080:**

- The proposed R&D Use is exactly that envisioned by Purpose F of the MU-LI District in Section 23.206.030 which provides specifically for the development of premises that will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock.
- There is a high likelihood that the R&D space will be leased to start-ups and growing companies, many of which are likely be in the burgeoning technology and life science sector. As they grow and develop, those companies are likely to locate associated operations such as research and development, product proto-typing, and fulfillment nearby in West Berkeley or partner with other local companies to provide those functions.
- The R&D Use is internal to the building. There are no manufacturing or light industrial uses being displaced to create this use. At this location, the R&D Use will not create any economic, physical or social constraints to light manufacturers.
- R&D Uses, even in highly specific technology-based organizations, create a variety of direct and indirect well-paid jobs that do not require advanced degrees. Examples being office management, sales, marketing, administrative support, book-keeping etc.
- The conversion of this specific location to R&D Use will not in any way impact the continued availability in West Berkeley of large manufacturing and industrial buildings for use by medium sized and larger light manufacturers.
- Given the very strong focus within both the University of California and Lawrence Berkeley National Laboratory on energy conservation and environmental sciences, there is a strong possibility that start-up companies coming out of those institutions would be associated with the maintenance and improvement of the environment.

- The conversion of currently vacant, highly specific Media Production space to R&D Use will bring additional tenants to West Berkeley whose employees will support local businesses such as banks, restaurants, cafés and stores such as the West Berkeley Bowl. This conversion will have no impact on the lawful and reasonable operation of Light Industrial uses.

## **2. The proposed change in use is compatible with the surrounding uses and buildings**

This is an internal change of use within an existing building that already contains 19,995 square feet of area under R&D Use. As shown on the attached graphic, the immediately adjacent internal uses are the building lobby, Office, Childcare and Media Production, none of which will be incompatible with additional R&D Use.

The 2600 Tenth Street site occupies a full city block bounded by Parker, Tenth, Carleton and Ninth Streets. The internal change of use will not be incompatible with any surrounding use or buildings, all of which are separated from 2600 Tenth Street by a city street and are in zoning districts that also allow R&D Use:

The building to the north (1005 Parker Street) is zoned MU-LI and comprises warehouse (West Berkeley Bowl) and analytical testing /office space (Steep Hill).

The site to the east (2621 Tenth Street) was recently re-zoned Commercial West Berkeley. A new 60,000 SF medical office building is currently under construction on this site.

The site to the south (known as the Pardee Block) is zoned Mixed Use Residential. The northern two thirds of this site, closest to 2600 Tenth Street, will be converted to a surface parking lot to serve the medical office building under construction at 2621 Tenth Street.

The block to the west is zoned MU-LI with a number of uses. The primary uses of the buildings facing Tenth Street are book publishing (NOLO Press), Office Equipment Supply (Saddle Point), Audio Equipment distributor (Immedia Sound) and a restaurant (Juan's Place).

## **3. The proposed change in use is consistent with the adopted West Berkeley Plan**

The West Berkeley Plan has five goals. This proposed change of use is consistent with each of those goals:

Goal 1: *Over the economically active area of West Berkeley, provide for a continued economic and land use mix, incorporating manufacturing, other industrial, retail and office/laboratory uses, to benefit Berkeley residents and businesses economically, benefit the City government fiscally, and promotes the varied and interest character of the area.*

R&D is an approved use in MU-LI and is in keeping with the economic and land use mix described in Goal 1. The 9,750 square feet in question is not currently generating any economic benefit to Berkeley residents or businesses. Converting the space will bring jobs and associate economic benefit to local businesses plus generate business license and tax revenue for the City government while maintaining the character of the area.

Policy D of Goal 1 specifically calls for the provision of space for, and designation of, appropriate locations for, office, R&D, service, and laboratory businesses, particularly growing Berkeley based businesses which are particularly suited to West Berkeley's physical environment.

Goal 2: *Channel development--both new businesses and residences and the expansion of existing businesses--to districts which are appropriate for the various existing elements of the West Berkeley land use mix.*

As discussed above, the conversion to R&D Use will provide much needed space to attract new businesses and allow expansion of new businesses within West Berkeley. R&D Use is already an approved use in the MU-LI district.

Goal 3: *Protect residential core neighborhoods from adverse impacts of economic growth--especially traffic and parking congestion and noise.*

There will be no traffic, parking congestion or noise impacts on West Berkeley's core residential neighborhoods from this change of use of 9,750 SF since the vehicular access routes to the building (Seventh Street, San Pablo Avenue, Parker Street and Carleton Street) are not residential core neighborhoods.

The building is very well served by alternative transportation options providing tenants' staff and visitors with multiple ways to get to and from work without using personal vehicles:

- The West Berkeley Shuttle, which provides a reliable connection to the Ashby BART station during peak hours, has a pick-up and drop-off stop right at the entrance to 2600 Tenth Street.
- 2600 Tenth Street is located only one block west of San Pablo Avenue, a major public transportation corridor and Caltrans route.
- 2600 Tenth Street is located directly on the Ninth Street bicycle boulevard and has a “Go-Bike” bicycle rental stand located on the corner of Ninth and Parker Streets.

*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 proposed change of use is internal to the building and does not constitute a new development. It is therefore not in conflict with Goal 4.

*Goal 5: Clarify and rationalize the development review process, so that clearer guidance is given to applicants and people affected by projects, and so that decisions on projects may occur more rapidly, while providing appropriate opportunities for citizen input.*

The proposed change of use is internal to the building and does not constitute a new development. It is therefore not in conflict with Goal 5.

**4. The Change in Use will be unlikely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings in the District from manufacturing, wholesale trade or warehouse uses.**

This is an internal change of use. 2600 Tenth Street does not contain manufacturing, wholesale trade or warehouse uses nor will this change in use result in a substantial change in these uses at any other building in the District.

**5. The Change of Use will be designed in such a manner to be supportive of the light industrial character of the district.**

This is an internal change of use and, as such, will not in any way change the light industrial character of the district. Any externally visible modifications resulting from the change of use to R&D (such as possible new exterior doors or additional windows) will be designed to be compatible with those existing at 2600 Tenth Street.

**6. The Change of Use will be able to meet any applicable performance standards as described in Section 23.206.080.**

- A. The Change of Use is internal only and therefore will not increase the current Floor Area Ratio of the site which is below 1.10.
- B. The Change of Use is internal only and therefore will not increase the current height of the building.
- C. The Change of Use does not require yards for main buildings, accessory buildings, or accessory structures.
- D. The R&D Use will not increase dust, glare, noise, odor, vibration, hazardous materials or any other potential off-site environmental impacts.
- E. The Change of Use will not create any applicable environmental impacts

Conformance with the Requirements of Section 23.206.080 and Section 23.206.030 of the Berkeley Zoning Ordinance

Pursuant to both Table 23.206-2 and Table 23.206-3, a change of use from Media Production to R&D Use of 9,750 SF is subject to an Administrative Use Permit.

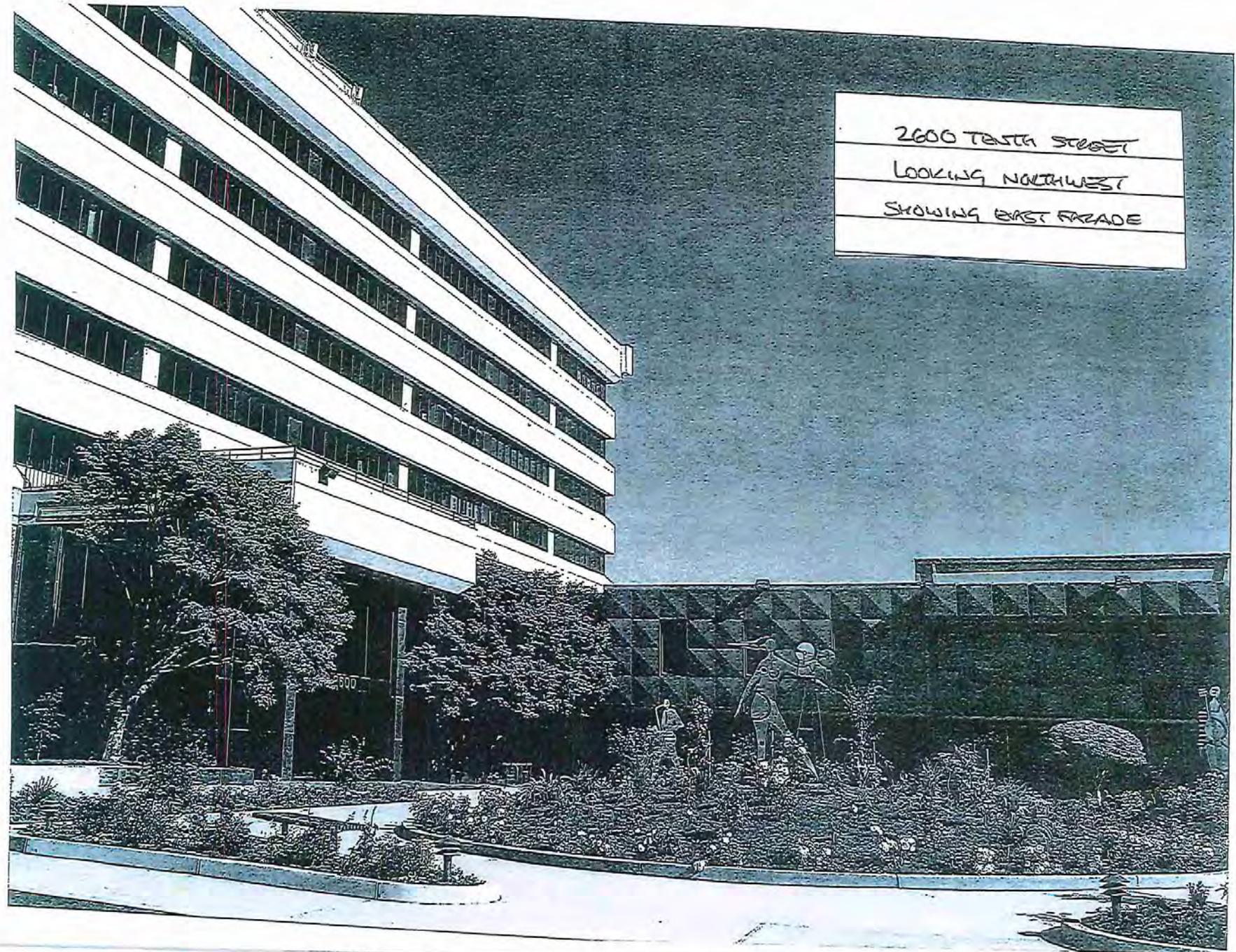
The proposed Change of Use will not create or contribute to a shortage of industrial spaces in West Berkeley of this size. The location of this use within an existing building (with no conventional industrial infrastructure such as loading docks) immediately adjacent to existing Child Care, Media Production, R&D, and Office uses makes it impractical for any other industrial use.

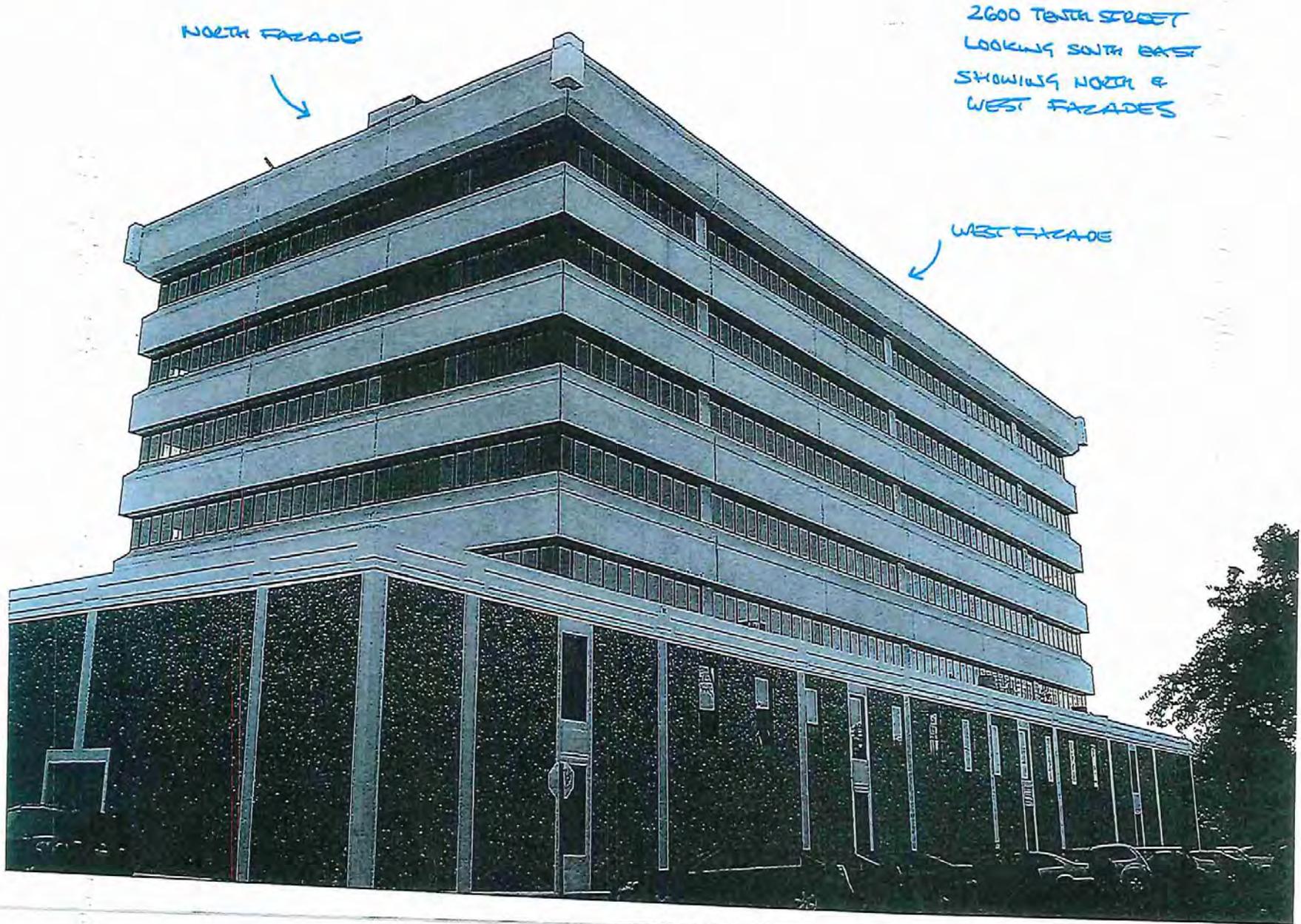
This highly specialized Media Production use was only able to remain in operation over the last 10 years through a substantial annual financial operating subsidy. It has stood empty since September 2018. As described in detail above, independent recording studios such as this have been overtaken by technology and are simply no longer economically viable.

The conversion of the 9,750 SF from a vacant Recording Studio, generating no economic benefit to the District or to the City of Berkeley, to R&D Use that will be highly attractive to start-ups and growing companies that will create jobs and associated economic benefits to the District and the City.

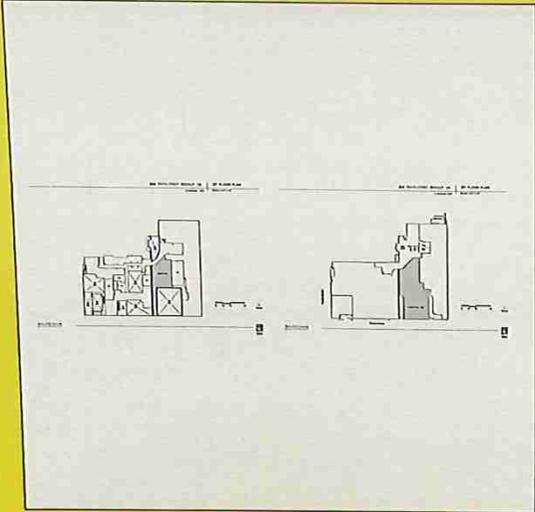
The change of use to R&D Use will undoubtedly better serve the purposes of the MU-LI District than leaving the space intact.

Lisa Vogel  
Wareham Development  
February 21, 2023





# PROPOSED PROJECT



## PROJECT INFORMATION

### 2600 Tenth Street

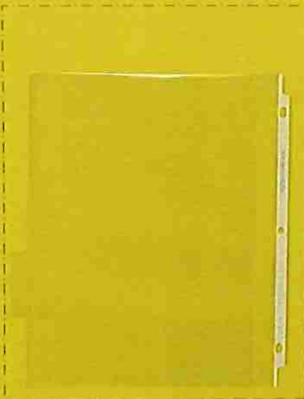
Administrative Use Permit for the change of use of 9,750 square feet of space located on the first and second floor of the building from Media Production to R&D Use

## APPLICANT INFORMATION

2600 Tenth Street, LLC  
1120 Nye Street, Suite 400  
San Rafael, CA 94901 Tel:415-457-4964

**For more information check the Planning Department Web Page:  
[www.cityofberkeley.info/planning](http://www.cityofberkeley.info/planning)  
or call 510-981-7410**

### Public Notices:





Via: Email – supdegrave@cityofberkeley.info

February 21, 2023

Ms. Samantha Updegrave  
Zoning Officer  
City of Berkeley  
Planning Department  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

Re: Administrative Use Permit Application – 2600 Tenth Street, Berkeley

Dear Ms. Updegrave:

Please find enclosed a completed AUP application form for:

- i. Change of Use of 9,750 square feet of space located on the first and second floors of 2600 Tenth Street from Media Production to Research & Development pursuant to Table 23.206.080 of the Berkeley Municipal Code, and
- ii. Division of the space into no more than nine suites pursuant to Table 23.206-3 of the Code. The actual number of suites will be dependent on tenant requirements.

The area in question was previously occupied by Fantasy Studios. The studio operation was closed in 2018 and the recording equipment sold to another studio in 2019. The attached graphics show the location of the subject area in green. The Research & Development Use will allow us to create much needed space for innovative companies seeking to locate in, or within Berkeley.

The building has a number of assigned suite numbers per the enclosed 2007 and 2014 Address Notifications. Suites 105-109 have never been used at the building and will be assigned to the new area.

Please do not hesitate to contact me should you require any further information.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Vogel".

Lisa Vogel  
for Wareham Property Group  
on behalf of 2600 Tenth Street, LLC

Enclosures



## ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

The Zoning Project Submittal Requirements packet describes all of the materials required to submit a complete Zoning Project Application to the Planning and Development Department, Land Use Division. Section 1 is a checklist of materials required for all projects. Sections 2-7 is a checklist of materials that may be required based on the project type or location.

Each submittal requirement on the checklist is described further in this packet, starting on page 3. Each description identifies whether an item is required, and indicates how to prepare each document, drawing, material, and/or report. Hyperlinked forms and instructions are also online under Land Use at <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/permit-forms>.

Pages 1—2 of this packet must be completed and submitted with the Zoning Project Application. Staff will verify that the minimum submittal requirements have been included with your package during the application screening and submittal. Applications that are missing the materials will not be accepted for review.

All documents, reports and plans must be provided in digital format, unless requested in hard copy. See the [Guide to Submitting a Zoning Project Application](#) for digital plans and document standards.

### SECTION 1 - REQUIRED FOR ALL PROJECTS

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>A. Completed Application                             <ul style="list-style-type: none"> <li>1. Zoning Project Application Form ✓</li> <li>2. Completed Copy of This Zoning Project Submittal Requirements Checklist (Pages 1-2)</li> </ul> </li> <li>B. Applicant Statement/Waiver Request ✓</li> </ul> | <ul style="list-style-type: none"> <li>C. Payment of Application Fees</li> <li>D. Hazardous Waste and Substance Statement</li> <li>E. Tabulation Form <i>N/A</i></li> <li>F. Pre-Application Yellow Poster</li> <li>G. Pre-Application Neighborhood Contact <i>N/A</i></li> </ul> |
|--|---|

### SECTION 2 - REQUIRED FOR ALL DEVELOPMENT PROJECTS INVOLVING NEW STRUCTURES, ADDITIONS, DEMOLITIONS, OR EXTERIOR ALTERATIONS

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>A. Site Plan</li> <li>B. Landscape and Usable Open Space Plan</li> <li>C. Lot Coverage Diagram</li> <li>D. Floor Plans</li> <li>E. Building Elevations</li> </ul> | <ul style="list-style-type: none"> <li>F. Street Strip Elevation</li> <li>G. Section Drawings</li> <li>H. Boundary and/or Topographic Survey</li> <li>I. Grading Plan</li> </ul> |
|--|--|

### SECTION 3 - SUPPORTING DOCUMENTS, STUDIES, GRAPHICS, AND DEPICTIONS

- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>A. Site Photographs</li> <li>B. Shadow Study</li> <li>C. Story Pole Plan</li> </ul> | <ul style="list-style-type: none"> <li>D. Arborist Report</li> <li>E. Structural Evaluation</li> <li>F. Parking Survey</li> </ul> | <ul style="list-style-type: none"> <li>G. Transportation Demand Management</li> <li>H. Photo Simulations</li> <li>I. Public Art Declaration</li> </ul> |
|--|---|--|



## ZONING PROJECT APPLICATION SUBMITTAL REQUIREMENTS

SECTION 4 - ENVIRONMENTAL REVIEW

- A. Creek Protection Documentation
- B. Historic Resource Evaluation
- C. Geotechnical and Seismic Hazard Investigation
- D. Phase I or Phase II Site Assessment
- E. Transportation Impact Study
- F. State General Construction Permit
- G. Stormwater Requirements Checklist

SECTION 5 - REQUIRED FOR PROJECTS SUBJECT TO AFFORDABLE HOUSING REQUIREMENTS

- A. Housing Affordability Statement
- B. Anti-Discrimination Housing Policies
- C. Density Bonus Eligibility Statement
- D. Area of Potential Effects (APE) Statement

SECTION 6 - LANDSCAPE AND GREEN BUILDING REQUIREMENTS

- A. WELO Landscape Requirements
- B. Natural Gas Prohibition, Berkeley Energy Code and Berkeley Green Co
- C. Green Building Requirements

SECTION 7 - RELATED LAND USE PLANNING DIVISION APPLICATIONS

- A. Design Review
- B. Structural Alteration Permit
- C. Zoning Use Questionnaire
- D. Home Occupation Questionnaire - Class II and III



# PLANNING & DEVELOPMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704  
Tel: 510.981.7410 TDD: 510.981.7474 Email: [Planning@cityofberkeley.info](mailto:Planning@cityofberkeley.info)

## HAZARDOUS WASTE AND SUBSTANCES STATEMENT

Pursuant to the Permit Streamlining Act (PSA), a development permit application may not be accepted as complete unless and until the applicant has submitted a signed statement indicating whether the proposed project site or any alternative site(s) is on the lists of hazardous waste sites compiled pursuant to Government Code Section [65962.5](#) by the California Secretary for Environmental Protection.

Data lists / maps are available at the following websites (check multiple lists and categories):

<http://www.calepa.ca.gov/SiteCleanup/CorteseList/>

<https://www.envirostor.dtsc.ca.gov/public/>

### Applicant's Information:

Name: Richard K. Robbins  
Street Address: 1120 Nye Street  
City, State, Zip Code: San Rafael, CA 94901  
Phone Number: 415-457-4964 Email: \_\_\_\_\_

### Project Information:

Address: 2600 Tenth Street  
City, State, Zip Code: Berkeley, CA 94710  
Assessor's book, page, and parcel number: 054-1764-012-05

### Specify any list that the site appears on:

N/A

Regulatory identification number: \_\_\_\_\_

Date of list: \_\_\_\_\_

### Site Use (if known):

Past: \_\_\_\_\_ Present: \_\_\_\_\_

Proposed: \_\_\_\_\_

### Submittals (check all that are available):

Phase I Report  Phase II Report  Closure Letter  Other: \_\_\_\_\_

### Applicant's verification:

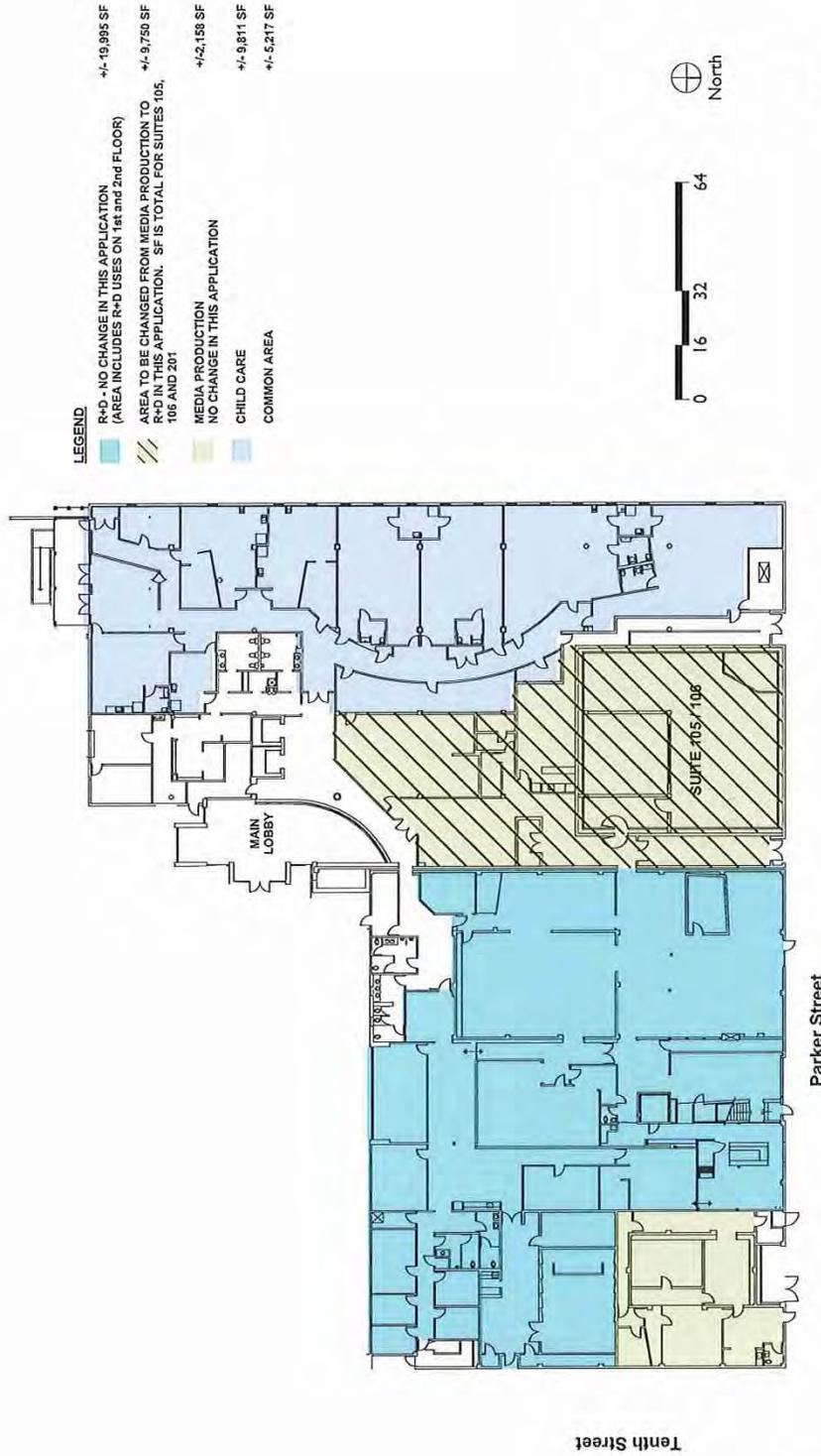
Signature:  Date: \_\_\_\_\_

IST FLOOR  
USE CHANGE EXHIBIT

2600 TENTH STREET, BERKELEY CA

19 December 2022

SCALE: 1/32"=1'-0"



WAREHAM  
DEVELOPMENT



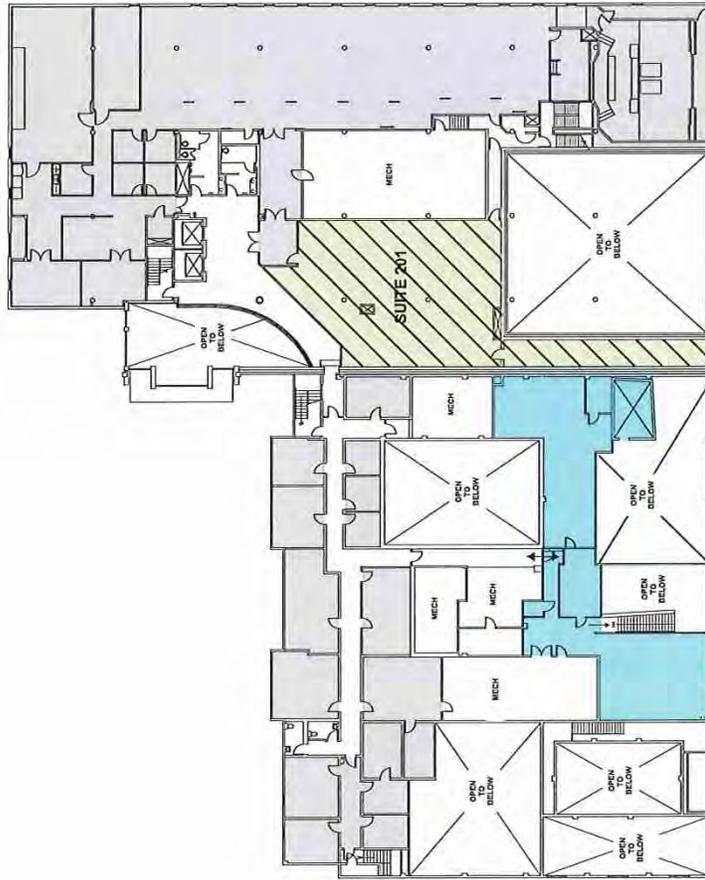
2ND FLOOR  
USE CHANGE EXHIBIT

2600 TENTH STREET, BERKELEY CA

19 December 2022

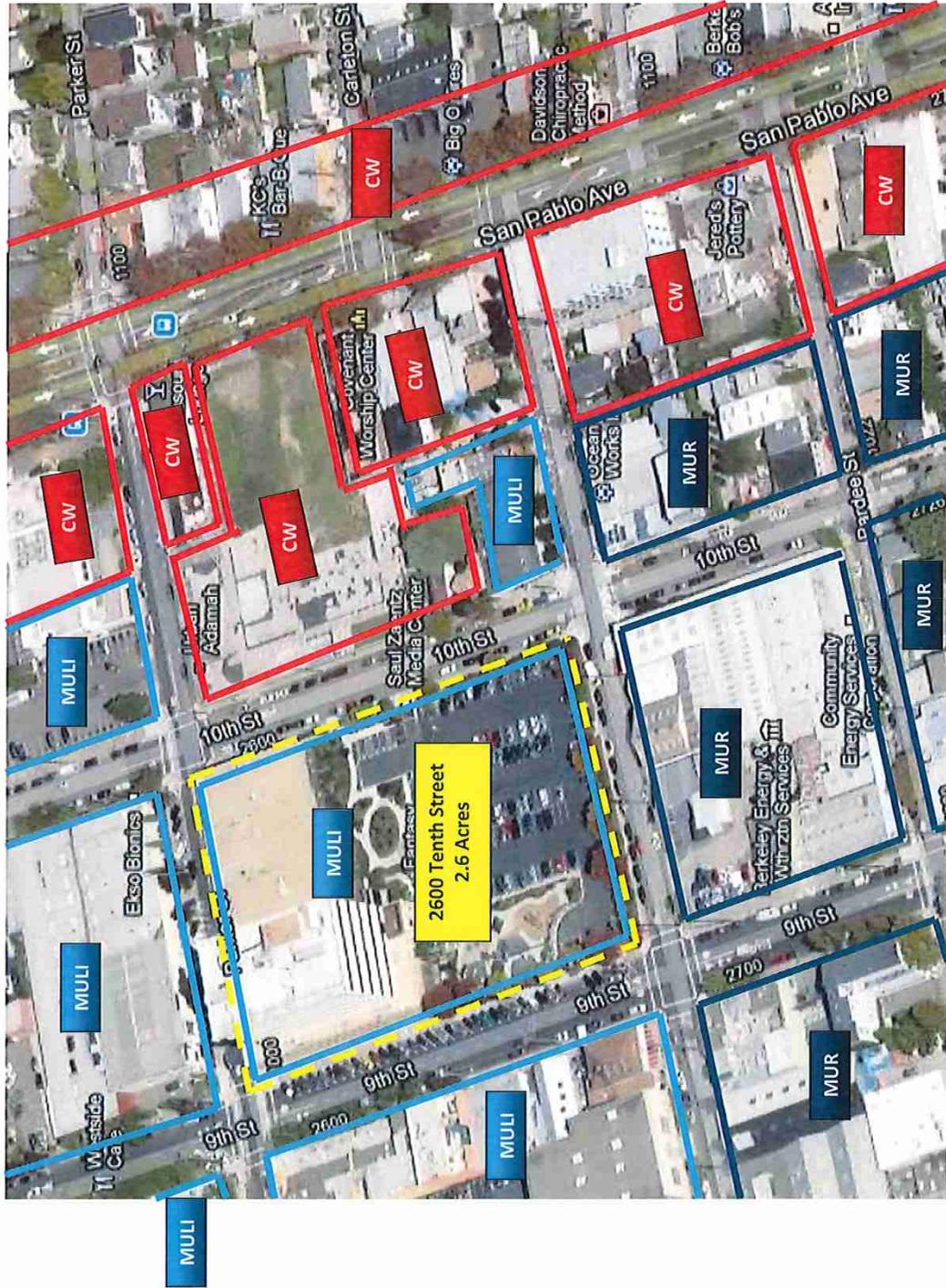
SCALE: 1/32"=1'-0"

- LEGEND**
- R+D - NO CHANGE IN THIS APPLICATION  
(AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,895 SF
  - AREA TO BE CHANGED FROM MEDIA PRODUCTION TO  
R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,  
106 AND 201 +/- 9,750 SF
  - NO CHANGES TO THESE AREAS IN THIS APPLICATION  
COMMON AREA +/- 15,001 SF  
+/- 2,744 SF



NORTH ↙

2600 Tenth Street, Berkeley – Location and Adjacent Zoning





Planning & Development  
Building & Safety Division

RECEIVED

AUG 25 2014

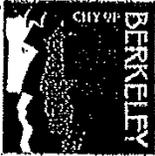
WAREHAM

Date: August 21, 2014  
To: Whom It May Concern  
From: Building & Safety Division, Planning and Development

*Please update your records to reflect the following parcel amendments.*

Assessor's Parcel No.      **054-1764-012-05**  
Main Address:                2600 – 10<sup>th</sup> Street  
New Additional Addresses: 2600 – 10<sup>th</sup> Street, #'s **200-210**  
   2600 – 10<sup>th</sup> Street, #'s **245-270**  
   2600 – 10<sup>th</sup> Street, #'s **700-720**  
Owner/Applicant:            2600 Tenth Street LLC  
   1120 Nye Street, #400  
   San Rafael, CA 94901-2946

cc: Berkeley Post Office  
County Assessor's Office  
EBMUD  
PG&E  
Finance, Property Records  
Fire, Public Safety  
Planning, LUP  
Owner/applicant  
File



Planning Department,  
Building and Safety Division

**COPY**

Date: January 22, 2007  
To: Whom It May Concern  
From: Malcolm Prince, Supervising Building Inspector

Assessor's Parcel No. 054-1764-012-05

Current Address: 2600 10<sup>TH</sup> STREET

New Addresses: **-SEE ATTACHED-**

Owner/Applicant: TENTH & PARKER L.P.  
2600 10<sup>TH</sup> STREET  
BERKELEY CALIFORNIA 94710

cc: Berkeley Post Office  
County Assessor's Office  
EBMUD  
PG&E  
Finance, Property Records  
Public Safety - Fire  
Zoning Division  
Owner/applicant  
B&S Address Assignment Staff  
File

*MP*



Planning Department  
Building and Safety Division

**STREET NUMBER NOTICE  
TO THE OWNER OR OCCUPANT OF BUILDING OR HOUSE**

**ASSESSOR'S PARCEL NO. 054-1764-012-05**

**CURRENT ADDRESS FOR THIS LOCATION IS:**

**2600 10<sup>TH</sup> STREET**

**NEW ADDITIONAL NUMBERS FOR THIS LOCATION ARE:**

**-SEE ATTACHED-**

The new numbers hereby assigned are the correct numbers for this frontage in accordance with Ordinance No. 1103-N.S., and your attention is called to Sections 3 and 4 thereof which read as follows:

SECTION 3. "All buildings or houses must be numbered at the expense of the owner, occupant, person, firm or corporation in control thereof."

SECTION 4. "In case any building or house within the limits of the City of Berkeley shall be incorrectly numbered or unnumbered, or the number thereof shall have become defaced or illegible, it shall be the duty of the owner or occupant thereof to cause the same to be numbered correctly within ten days after notification so to do, given by or under the direction of the Director, Planning Department. Said notice may be served by leaving a copy thereof at the said building or house in charge of any person, addressed 'To the owner or occupant of building or house' or may be given by posting such notice on the door or at the entrance way of said building."

DATE: January 22, 2007

BELOW IS A COMPLETE LIST OF NEW ADDRESSES THAT HAVE BEEN ADDED  
AT 2600 10<sup>TH</sup> STREET: SUITES # 100-151

2600 10 <sup>th</sup> Street, Suite #100	2600 10 <sup>th</sup> Street, Suite #127
2600 10 <sup>th</sup> Street, Suite #101	2600 10 <sup>th</sup> Street, Suite #128
2600 10 <sup>th</sup> Street, Suite #102	2600 10 <sup>th</sup> Street, Suite #129
2600 10 <sup>th</sup> Street, Suite #103	2600 10 <sup>th</sup> Street, Suite #130
2600 10 <sup>th</sup> Street, Suite #104	2600 10 <sup>th</sup> Street, Suite #130
2600 10 <sup>th</sup> Street, Suite #105	2600 10 <sup>th</sup> Street, Suite #131
2600 10 <sup>th</sup> Street, Suite #106	2600 10 <sup>th</sup> Street, Suite #132
2600 10 <sup>th</sup> Street, Suite #107	2600 10 <sup>th</sup> Street, Suite #133
2600 10 <sup>th</sup> Street, Suite #108	2600 10 <sup>th</sup> Street, Suite #134
2600 10 <sup>th</sup> Street, Suite #109	2600 10 <sup>th</sup> Street, Suite #135
2600 10 <sup>th</sup> Street, Suite #110	2600 10 <sup>th</sup> Street, Suite #136
2600 10 <sup>th</sup> Street, Suite #111	2600 10 <sup>th</sup> Street, Suite #137
2600 10 <sup>th</sup> Street, Suite #112	2600 10 <sup>th</sup> Street, Suite #138
2600 10 <sup>th</sup> Street, Suite #113	2600 10 <sup>th</sup> Street, Suite #139
2600 10 <sup>th</sup> Street, Suite #114	2600 10 <sup>th</sup> Street, Suite #140
2600 10 <sup>th</sup> Street, Suite #115	2600 10 <sup>th</sup> Street, Suite #141
2600 10 <sup>th</sup> Street, Suite #116	2600 10 <sup>th</sup> Street, Suite #142
2600 10 <sup>th</sup> Street, Suite #117	2600 10 <sup>th</sup> Street, Suite #143
2600 10 <sup>th</sup> Street, Suite #118	2600 10 <sup>th</sup> Street, Suite #144
2600 10 <sup>th</sup> Street, Suite #119	2600 10 <sup>th</sup> Street, Suite #145
2600 10 <sup>th</sup> Street, Suite #120	2600 10 <sup>th</sup> Street, Suite #146
2600 10 <sup>th</sup> Street, Suite #121	2600 10 <sup>th</sup> Street, Suite #147
2600 10 <sup>th</sup> Street, Suite #122	2600 10 <sup>th</sup> Street, Suite #148
2600 10 <sup>th</sup> Street, Suite #123	2600 10 <sup>th</sup> Street, Suite #149
2600 10 <sup>th</sup> Street, Suite #124	2600 10 <sup>th</sup> Street, Suite #150
2600 10 <sup>th</sup> Street, Suite #125	2600 10 <sup>th</sup> Street, Suite #151
2600 10 <sup>th</sup> Street, Suite #126	

BELOW IS A COMPLETE LIST OF NEW ADDRESSES THAT HAVE BEEN ADDED  
AT 2600 10<sup>TH</sup> STREET: SUITES # 300-351

2600 10 <sup>th</sup> Street, Suite #300	2600 10 <sup>th</sup> Street, Suite #327
2600 10 <sup>th</sup> Street, Suite #301	2600 10 <sup>th</sup> Street, Suite #328
2600 10 <sup>th</sup> Street, Suite #302	2600 10 <sup>th</sup> Street, Suite #329
2600 10 <sup>th</sup> Street, Suite #303	2600 10 <sup>th</sup> Street, Suite #330
2600 10 <sup>th</sup> Street, Suite #304	2600 10 <sup>th</sup> Street, Suite #330
2600 10 <sup>th</sup> Street, Suite #305	2600 10 <sup>th</sup> Street, Suite #331
2600 10 <sup>th</sup> Street, Suite #306	2600 10 <sup>th</sup> Street, Suite #332
2600 10 <sup>th</sup> Street, Suite #307	2600 10 <sup>th</sup> Street, Suite #333
2600 10 <sup>th</sup> Street, Suite #308	2600 10 <sup>th</sup> Street, Suite #334
2600 10 <sup>th</sup> Street, Suite #309	2600 10 <sup>th</sup> Street, Suite #335
2600 10 <sup>th</sup> Street, Suite #310	2600 10 <sup>th</sup> Street, Suite #336
2600 10 <sup>th</sup> Street, Suite #311	2600 10 <sup>th</sup> Street, Suite #337
2600 10 <sup>th</sup> Street, Suite #312	2600 10 <sup>th</sup> Street, Suite #338
2600 10 <sup>th</sup> Street, Suite #313	2600 10 <sup>th</sup> Street, Suite #339
2600 10 <sup>th</sup> Street, Suite #314	2600 10 <sup>th</sup> Street, Suite #340
2600 10 <sup>th</sup> Street, Suite #315	2600 10 <sup>th</sup> Street, Suite #341
2600 10 <sup>th</sup> Street, Suite #316	2600 10 <sup>th</sup> Street, Suite #342
2600 10 <sup>th</sup> Street, Suite #317	2600 10 <sup>th</sup> Street, Suite #343
2600 10 <sup>th</sup> Street, Suite #318	2600 10 <sup>th</sup> Street, Suite #344
2600 10 <sup>th</sup> Street, Suite #319	2600 10 <sup>th</sup> Street, Suite #345
2600 10 <sup>th</sup> Street, Suite #320	2600 10 <sup>th</sup> Street, Suite #346
2600 10 <sup>th</sup> Street, Suite #321	2600 10 <sup>th</sup> Street, Suite #347
2600 10 <sup>th</sup> Street, Suite #322	2600 10 <sup>th</sup> Street, Suite #348
2600 10 <sup>th</sup> Street, Suite #323	2600 10 <sup>th</sup> Street, Suite #349
2600 10 <sup>th</sup> Street, Suite #324	2600 10 <sup>th</sup> Street, Suite #350
2600 10 <sup>th</sup> Street, Suite #325	2600 10 <sup>th</sup> Street, Suite #351
2600 10 <sup>th</sup> Street, Suite #326	

BELOW IS A COMPLETE LIST OF NEW ADDRESSES THAT HAVE BEEN ADDED  
AT 2600 10<sup>TH</sup> STREET: **SUITES # 400-451**

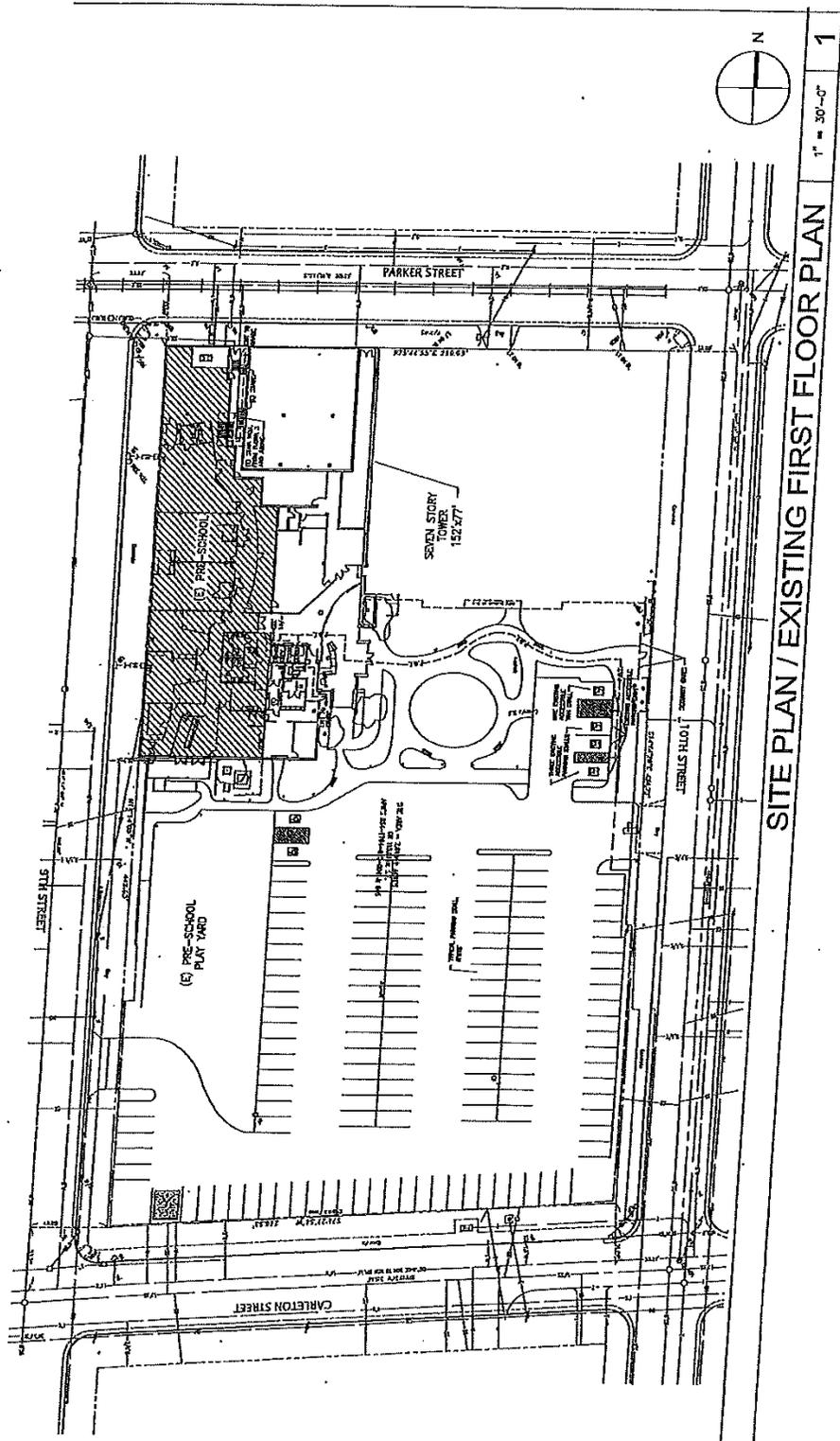
2600 10 <sup>th</sup> Street, Suite #400	2600 10 <sup>th</sup> Street, Suite #427
2600 10 <sup>th</sup> Street, Suite #401	2600 10 <sup>th</sup> Street, Suite #428
2600 10 <sup>th</sup> Street, Suite #402	2600 10 <sup>th</sup> Street, Suite #429
2600 10 <sup>th</sup> Street, Suite #403	2600 10 <sup>th</sup> Street, Suite #430
2600 10 <sup>th</sup> Street, Suite #404	2600 10 <sup>th</sup> Street, Suite #430
2600 10 <sup>th</sup> Street, Suite #405	2600 10 <sup>th</sup> Street, Suite #431
2600 10 <sup>th</sup> Street, Suite #406	2600 10 <sup>th</sup> Street, Suite #432
2600 10 <sup>th</sup> Street, Suite #407	2600 10 <sup>th</sup> Street, Suite #433
2600 10 <sup>th</sup> Street, Suite #408	2600 10 <sup>th</sup> Street, Suite #434
2600 10 <sup>th</sup> Street, Suite #409	2600 10 <sup>th</sup> Street, Suite #435
2600 10 <sup>th</sup> Street, Suite #410	2600 10 <sup>th</sup> Street, Suite #436
2600 10 <sup>th</sup> Street, Suite #411	2600 10 <sup>th</sup> Street, Suite #437
2600 10 <sup>th</sup> Street, Suite #412	2600 10 <sup>th</sup> Street, Suite #438
2600 10 <sup>th</sup> Street, Suite #413	2600 10 <sup>th</sup> Street, Suite #439
2600 10 <sup>th</sup> Street, Suite #414	2600 10 <sup>th</sup> Street, Suite #440
2600 10 <sup>th</sup> Street, Suite #415	2600 10 <sup>th</sup> Street, Suite #441
2600 10 <sup>th</sup> Street, Suite #416	2600 10 <sup>th</sup> Street, Suite #442
2600 10 <sup>th</sup> Street, Suite #417	2600 10 <sup>th</sup> Street, Suite #443
2600 10 <sup>th</sup> Street, Suite #418	2600 10 <sup>th</sup> Street, Suite #444
2600 10 <sup>th</sup> Street, Suite #419	2600 10 <sup>th</sup> Street, Suite #445
2600 10 <sup>th</sup> Street, Suite #420	2600 10 <sup>th</sup> Street, Suite #446
2600 10 <sup>th</sup> Street, Suite #421	2600 10 <sup>th</sup> Street, Suite #447
2600 10 <sup>th</sup> Street, Suite #422	2600 10 <sup>th</sup> Street, Suite #448
2600 10 <sup>th</sup> Street, Suite #423	2600 10 <sup>th</sup> Street, Suite #449
2600 10 <sup>th</sup> Street, Suite #424	2600 10 <sup>th</sup> Street, Suite #450
2600 10 <sup>th</sup> Street, Suite #425	2600 10 <sup>th</sup> Street, Suite #451
2600 10 <sup>th</sup> Street, Suite #426	

BELOW IS A COMPLETE LIST OF NEW ADDRESSES THAT HAVE BEEN ADDED  
AT 2600 10<sup>TH</sup> STREET: **SUITES # 500-551**

2600 10 <sup>th</sup> Street, Suite #500	2600 10 <sup>th</sup> Street, Suite #527
2600 10 <sup>th</sup> Street, Suite #501	2600 10 <sup>th</sup> Street, Suite #528
2600 10 <sup>th</sup> Street, Suite #502	2600 10 <sup>th</sup> Street, Suite #529
2600 10 <sup>th</sup> Street, Suite #503	2600 10 <sup>th</sup> Street, Suite #530
2600 10 <sup>th</sup> Street, Suite #504	2600 10 <sup>th</sup> Street, Suite #530
2600 10 <sup>th</sup> Street, Suite #505	2600 10 <sup>th</sup> Street, Suite #531
2600 10 <sup>th</sup> Street, Suite #506	2600 10 <sup>th</sup> Street, Suite #532
2600 10 <sup>th</sup> Street, Suite #507	2600 10 <sup>th</sup> Street, Suite #533
2600 10 <sup>th</sup> Street, Suite #508	2600 10 <sup>th</sup> Street, Suite #534
2600 10 <sup>th</sup> Street, Suite #509	2600 10 <sup>th</sup> Street, Suite #535
2600 10 <sup>th</sup> Street, Suite #510	2600 10 <sup>th</sup> Street, Suite #536
2600 10 <sup>th</sup> Street, Suite #511	2600 10 <sup>th</sup> Street, Suite #537
2600 10 <sup>th</sup> Street, Suite #512	2600 10 <sup>th</sup> Street, Suite #538
2600 10 <sup>th</sup> Street, Suite #513	2600 10 <sup>th</sup> Street, Suite #539
2600 10 <sup>th</sup> Street, Suite #514	2600 10 <sup>th</sup> Street, Suite #540
2600 10 <sup>th</sup> Street, Suite #515	2600 10 <sup>th</sup> Street, Suite #541
2600 10 <sup>th</sup> Street, Suite #516	2600 10 <sup>th</sup> Street, Suite #542
2600 10 <sup>th</sup> Street, Suite #517	2600 10 <sup>th</sup> Street, Suite #543
2600 10 <sup>th</sup> Street, Suite #518	2600 10 <sup>th</sup> Street, Suite #544
2600 10 <sup>th</sup> Street, Suite #519	2600 10 <sup>th</sup> Street, Suite #545
2600 10 <sup>th</sup> Street, Suite #520	2600 10 <sup>th</sup> Street, Suite #546
2600 10 <sup>th</sup> Street, Suite #521	2600 10 <sup>th</sup> Street, Suite #547
2600 10 <sup>th</sup> Street, Suite #522	2600 10 <sup>th</sup> Street, Suite #548
2600 10 <sup>th</sup> Street, Suite #523	2600 10 <sup>th</sup> Street, Suite #549
2600 10 <sup>th</sup> Street, Suite #524	2600 10 <sup>th</sup> Street, Suite #550
2600 10 <sup>th</sup> Street, Suite #525	2600 10 <sup>th</sup> Street, Suite #551
2600 10 <sup>th</sup> Street, Suite #526	

BELOW IS A COMPLETE LIST OF NEW ADDRESSES THAT HAVE BEEN ADDED  
AT 2600 10<sup>TH</sup> STREET: SUITES # 600-651

2600 10 <sup>th</sup> Street, Suite #600	2600 10 <sup>th</sup> Street, Suite #627
2600 10 <sup>th</sup> Street, Suite #601	2600 10 <sup>th</sup> Street, Suite #628
2600 10 <sup>th</sup> Street, Suite #602	2600 10 <sup>th</sup> Street, Suite #629
2600 10 <sup>th</sup> Street, Suite #603	2600 10 <sup>th</sup> Street, Suite #630
2600 10 <sup>th</sup> Street, Suite #604	2600 10 <sup>th</sup> Street, Suite #630
2600 10 <sup>th</sup> Street, Suite #605	2600 10 <sup>th</sup> Street, Suite #631
2600 10 <sup>th</sup> Street, Suite #606	2600 10 <sup>th</sup> Street, Suite #632
2600 10 <sup>th</sup> Street, Suite #607	2600 10 <sup>th</sup> Street, Suite #633
2600 10 <sup>th</sup> Street, Suite #608	2600 10 <sup>th</sup> Street, Suite #634
2600 10 <sup>th</sup> Street, Suite #609	2600 10 <sup>th</sup> Street, Suite #635
2600 10 <sup>th</sup> Street, Suite #610	2600 10 <sup>th</sup> Street, Suite #636
2600 10 <sup>th</sup> Street, Suite #611	2600 10 <sup>th</sup> Street, Suite #637
2600 10 <sup>th</sup> Street, Suite #612	2600 10 <sup>th</sup> Street, Suite #638
2600 10 <sup>th</sup> Street, Suite #613	2600 10 <sup>th</sup> Street, Suite #639
2600 10 <sup>th</sup> Street, Suite #614	2600 10 <sup>th</sup> Street, Suite #640
2600 10 <sup>th</sup> Street, Suite #615	2600 10 <sup>th</sup> Street, Suite #641
2600 10 <sup>th</sup> Street, Suite #616	2600 10 <sup>th</sup> Street, Suite #642
2600 10 <sup>th</sup> Street, Suite #617	2600 10 <sup>th</sup> Street, Suite #643
2600 10 <sup>th</sup> Street, Suite #618	2600 10 <sup>th</sup> Street, Suite #644
2600 10 <sup>th</sup> Street, Suite #619	2600 10 <sup>th</sup> Street, Suite #645
2600 10 <sup>th</sup> Street, Suite #620	2600 10 <sup>th</sup> Street, Suite #646
2600 10 <sup>th</sup> Street, Suite #621	2600 10 <sup>th</sup> Street, Suite #647
2600 10 <sup>th</sup> Street, Suite #622	2600 10 <sup>th</sup> Street, Suite #648
2600 10 <sup>th</sup> Street, Suite #623	2600 10 <sup>th</sup> Street, Suite #649
2600 10 <sup>th</sup> Street, Suite #624	2600 10 <sup>th</sup> Street, Suite #650
2600 10 <sup>th</sup> Street, Suite #625	2600 10 <sup>th</sup> Street, Suite #651
2600 10 <sup>th</sup> Street, Suite #626	



SITE PLAN / EXISTING FIRST FLOOR PLAN

1" = 30'-0"

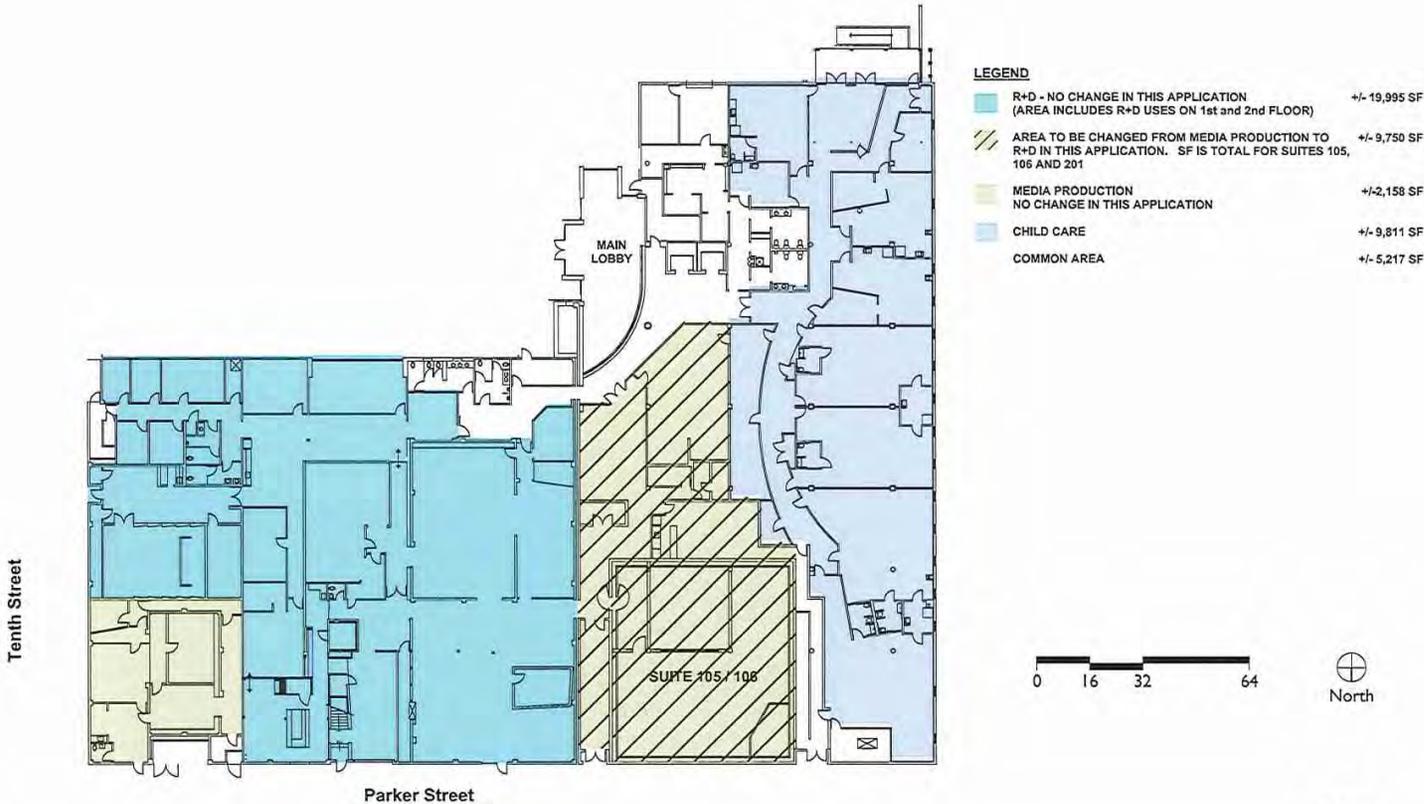
1

2600 TENTH STREET, BERKELEY CA

**1ST FLOOR  
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

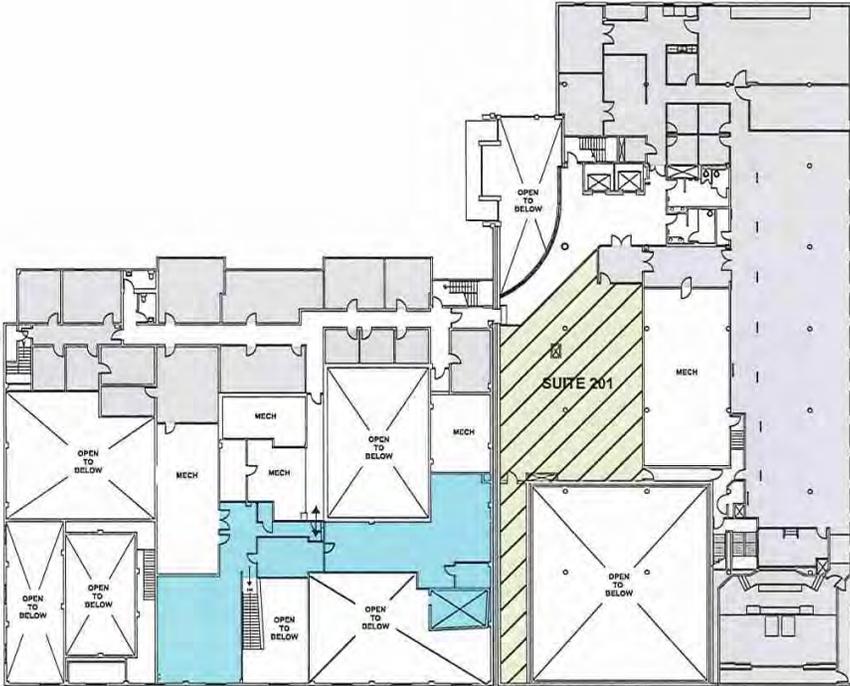


2600 TENTH STREET, BERKELEY CA

**2ND FLOOR  
 USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

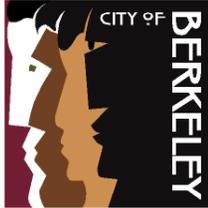


**LEGEND**

<span style="display:inline-block; width:15px; height:10px; background-color:lightblue; border:1px solid black;"></span>	R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
<span style="display:inline-block; width:15px; height:10px; background: repeating-linear-gradient(45deg, transparent, transparent 2px, green 2px, green 4px); border:1px solid black;"></span>	AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
<span style="display:inline-block; width:15px; height:10px; background-color:lightgrey; border:1px solid black;"></span>	NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
	COMMON AREA	+/-2,744 SF



Public



Planning & Development Department  
Land Use Planning Division

March 27, 2023

Lisa Vogel  
1120 Nye Street  
San Rafael, CA 94901

Sent via email:

[lvogel@warehamdevelopment.com](mailto:lvogel@warehamdevelopment.com)

**RE: 2600 Tenth Street, Application# ZP2023-0031**

Administrative Use Permit to:

*Change the use of 9,750 square feet from media production to research + development (R+D), bringing the total area of R+D over 20,000 square feet, and create up to nine tenant spaces within the change of use area.*

Dear Applicant:

On behalf of the City of Berkeley, I would like to introduce myself as the project planner for the above referenced application. Staff from various City departments will be reviewing your application to ensure that the project is complete as submitted. If any questions arise, City staff will either contact you in writing or via the telephone at the phone number supplied on the submitted application. Unless you inform us otherwise, you will be the primary contact during the application process. It is also prudent to expect site visits by various staff members over the course of the City's review of the project. These visits will be from the public right-of-way, unless an appointment is made with you in advance.

If you have any questions or concerns, please feel free to contact me at 510-981-7430 or [nkarimzadigan@cityofberkeley.info](mailto:nkarimzadigan@cityofberkeley.info). I will contact you within 30 days of your application date to follow-up with the status of the project and to request any additional information needed to complete the application. For answers to frequently asked questions – including “what is the process?” and “how long does it take?” – can be found on the City's [Administrative Use Permits](#) web page.

Please know that this application is subject to the Permits Streamlining Act, Government Code Section 65921, which (1) sets forth various time limits within which state and local government agencies must either approve or disapprove permits and (2) providing that these time limits may be extended once (and only once) by agreement between the parties.

I look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Nilu Karimzadegan".

Nilu Karimzadegan  
Senior Planner



Planning and Development Department  
Land Use Planning Division

April 10, 2023

Sent via email:  
[lvogel@warehamdevelopment.com](mailto:lvogel@warehamdevelopment.com)

Lisa Vogel  
1120 Nye Street  
San Rafael, CA 94901

**Re: Use Permit #ZP2023-0031 for 2600 Tenth Street**

Dear Lisa Vogel,

On March 9, 2023, Wareham Development submitted an Administrative Use Permit Application to Change the use of 9,750 square feet from media production to research + development (R+D), bringing the total area of R+D over 20,000 square feet, and create up to nine tenant spaces within the change of use area

- I. Based on staff's preliminary review, the application appears to include the following permits:

**Required Permits:**

- Administrative Use Permit (AUP) 23.206.020 to establish Research and Development over 20,000 square feet; and
- AUP per BMC Section 23. 206.030(B) to create up to nine tenant spaces.

Staff has reviewed your submittal package and determined that your application is incomplete and the following item is needed to complete our review of your application:

- 1) **Pre-Application Yellow Poster:** Please install the required yellow poster at all the 4 street frontages.

**Mounting Instructions:**

1. Install sign prior to submitting project application to the City.
2. Mount the sign at the front property line on a post, fence or wall within arm's reach from the public sidewalk, with the top edge of the sign at 7' above the ground.
3. Install one sign on each side of the property that abuts a street (i.e. corner lots must have at least two signs).

2600 Tenth Street  
Application Incomplete – Submittal #1

April 10, 2023  
Use Permit #ZP2023-0031

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4. Include two photographs of the installed sign in your project application:

(A) close-up so the content of the sign is legible; and

(B) from a distance showing the placement of the installed sign. Include a person or measuring stick in at least one photo to provide scale. Indicate date that the photo was taken.

5. It is the applicant's responsibility to maintain the signs consistent with these specifications for the full duration of the review of this project, or until advised by the Planning Department to remove or alter the sign. Signs must be on-site for posting of any City notice related to this project. Failure to maintain the signs may delay action on your project to allow for re-noticing.

Please submit responses to all requested items at once, and not incrementally. In your resubmittal, **include a letter** stating how you have addressed the incomplete items. If you submit hardcopies of plans do not bring plans larger than 11x17 or 12x18.

Sincerely,

Nilu Karimzadegan  
Senior Planner  
NKarimzadegan@cityofberkeley.info



Via: Email – nkarimzadegan@cityofberkeley.info

April 20, 2023

Nilu Karimzadegan  
Senior Planner  
City of Berkeley  
Planning Department  
1947 Center Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

Re: Use Permit #ZP2023-0031 – 2600 Tenth Street, Berkeley

Dear Nilu:

Pursuant to your letter dated April 10, 2023, we have now installed the proper number of yellow posters on the site. Photos are attached for your reference.

We hope this will now allow staff review for our zoning certificate.

Should you have any questions, please do not hesitate to contact me.

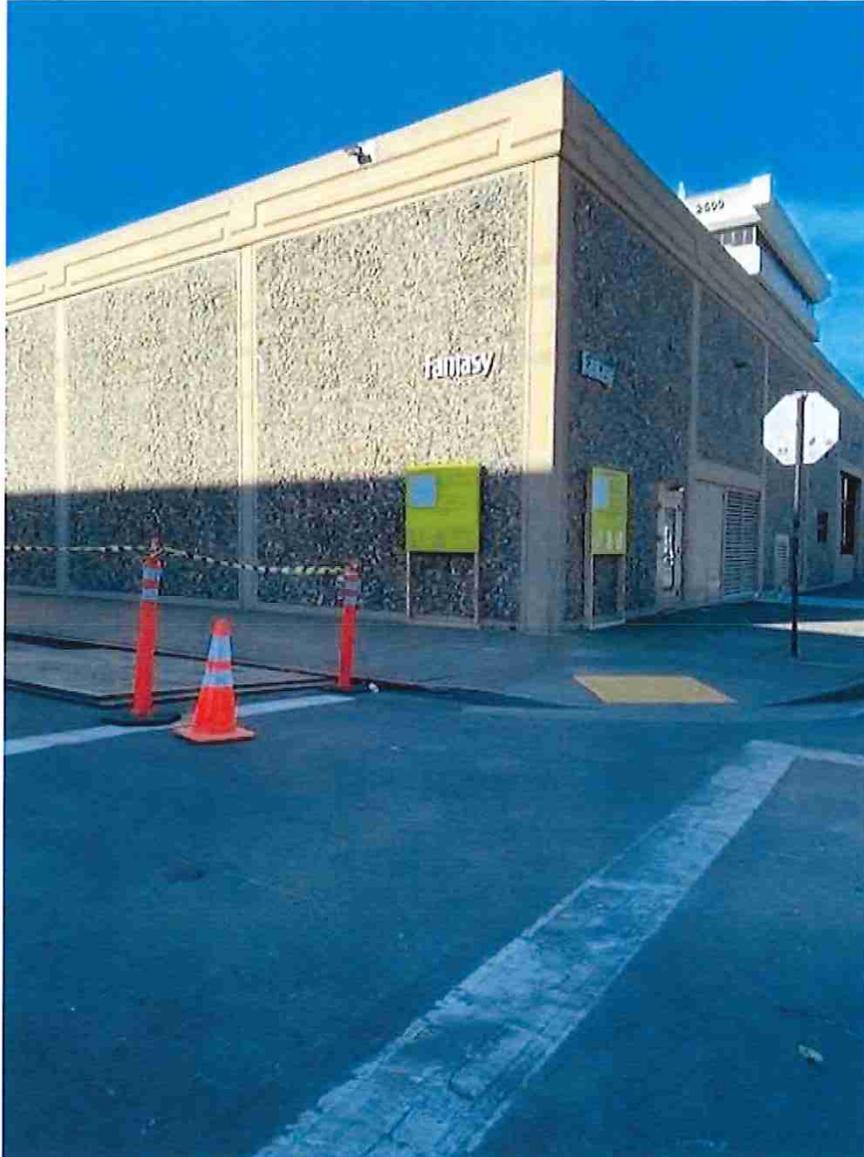
Sincerely,

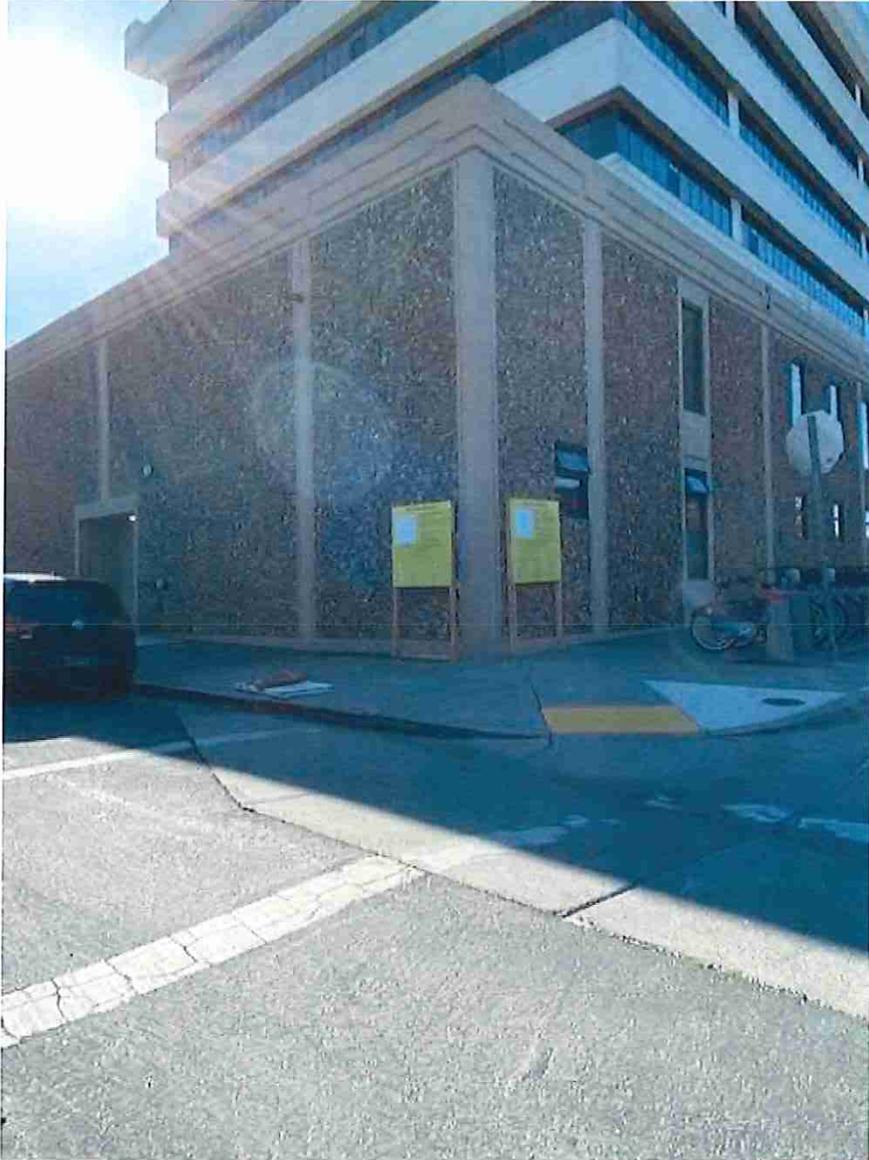
A handwritten signature in blue ink that reads "Lisa Vogel".

Lisa Vogel  
for Wareham Property Group  
on behalf of 2600 Tenth Street, LLC

Attachments













Planning and Development Department  
Land Use Planning Division

May 19, 2023

Sent via email:

[LVogel@warehamdevelopment.com](mailto:LVogel@warehamdevelopment.com)

Lisa Vogel  
Wareham Development  
1120 Nye Street, Suite 400  
San Rafael, CA 94901

Re: Administrative Use Permit #ZP2023-0031 for 2600 Tenth Street

Dear Applicant,

On March 09, 2023, An Administrative Use Permit Application was submitted to change the use of 9,750 square feet from media production to research + development (R+D), bringing the total area of R+D over 20,000 square feet, and create up to nine tenant spaces within the change of use area. The application has undergone review for completeness according to the submittal checklist and application guidelines.

Pursuant to the Permit Streamlining Act (Government Code Chapter 4.5 Title 7), your application has been deemed complete as of May 19, 2023. Additional comments may be made at a later time if changes are made to the project.

Based on my review, the following zoning permits are required:

1. Administrative Use Permit (AUP) 23.206.020 to establish Research and Development over 20,000 square feet; and
2. AUP per BMC Section 23. 206.030(B) to create up to nine tenant spaces.

May 19, 2023

2600 Tenth Street – Complete Application Notice

Page 2 of 2

Administrative / Use Permit #ZP2023-0031

Level of Review Under the California Environmental Quality Act

Under the California Environmental Quality Act (CEQA), staff determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be required, depending on the type of project. This determination will be made within 30 days of an application being deemed complete. If a project is exempt from CEQA, staff recommends an exemption determination to either the Zoning Officer or the Zoning Adjustments Board (ZAB).

Staff's recommendation is that this project meets the criteria for a **Categorical Exemption**, pursuant to CEQA Guidelines Section 15301 (Existing Facilities). However, the final determination is made by the Zoning Officer

Now that your Administrative Use Permit application is deemed complete, I will work to finish my analysis of this project and prepare the findings and conditions for review and issuance by the Zoning Officer within 60 to 90 days of the application being deemed complete.

Next Steps

During the course of my review, additional information may be required to correct, clarify, or amplify the details provided in the application. This may result in additional fees for zoning permits, CEQA review costs, and other processes/reviews, as needed based on the City's adopted fee schedule.

Please reach out to me directly if you have any questions about your project application.

Sincerely,

Nilu Karimzadegan

Senior Planner

510-981-7430

[nkarimzadegan@cityofberkeley.info](mailto:nkarimzadegan@cityofberkeley.info)



Planning and Development Department  
Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Post and Mail Date:  
November 13, 2023

## NOTICE OF ADMINISTRATIVE DECISION

**AUP #ZP2023-0031 -- APPROVED**

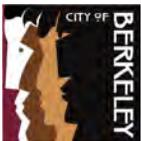
**2600 Tenth Street**

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

**Appeal Period: November 14, 2023 to December 4, 2023**  
(see reverse)

All application materials for this project are available online at:  
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.  
Questions about the project should be directed to the project planner, Nilu Karimzadegan at (510) 981-7430 or [nkarimzadegan@berkeleyca.gov](mailto:nkarimzadegan@berkeleyca.gov).

«NAME1»  
«NAME2»  
«ADDRESS1» «ADDRESS2»



Planning and Development Department  
Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
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## NOTICE OF ADMINISTRATIVE DECISION

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«Next Record» «NAME1»  
«NAME2»  
«ADDRESS1» «ADDRESS2»

**TO APPEAL THIS DECISION (see Chapter 23.410 of the Berkeley Municipal Code):**

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley. You may contact the Land Use Planning Division by phone at (510) 981-7410 if you have any questions.
2. The appeal must be received prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
  - C. The fee for all appeals by Applicants is \$3,680.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
  2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
  3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
  4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
  5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
    - A. That this belief is a basis of your appeal.
    - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
    - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.
- If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.

**TO APPEAL THIS DECISION (see Section 23B.28.060 of the Berkeley Municipal Code):**

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley. You may contact the Land Use Planning Division by phone at (510) 981-7410 if you have any questions.
2. The appeal must be received prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$200. This fee may be reduced to \$75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - C. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

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NAME1	NAME2	ADDRESS1	ADDRESS2
Laurie Bright	2626 SAN PABLO AVE	BERKELEY CA	94702
Citizens Opposing Polluted Environment	1908 TENTH ST	BERKELEY CA	94710
Daughters for Social / Economic Change	PO BOX 2203	BERKELEY CA	94701
Merchants and Artists in West Berkeley	930 GRAYSON ST	BERKELEY CA	94710
Potter Creek-West Berkeley Group	2810 EIGHTH ST	BERKELEY CA	94710
Office of Economic Development	2120 MILVIA ST	BERKELEY CA	94704
San Pablo Neighborhood Council	2749 WALLACE ST	BERKELEY CA	94702
West Street (2300 Block) Association	2345 WEST ST	BERKELEY CA	94702
Parker Neighborhood Watch-1100 Block	1117 PARKER ST	BERKELEY CA	94702
Derby Street (1100 Block) Association	1112 DERBY ST	BERKELEY CA	94702
Oregon St (1100-1200 Block) Neighborhood	1208 OREGON ST	BERKELEY CA	94702
University of California, Facilities Services	A&E Building, Room 300 University of California Berkeley	BERKELEY CA	94720
Urban Creeks Council	861 REGAL RD	BERKELEY CA	94708
Office of the City Manager	2180 MILVIA ST 5TH FLOOR	BERKELEY CA	94704
Bananas Inc.	5232 CLAREMONT AVE	OAKLAND CA	94618
Heinz Avenue Arts Group	800 HEINZ AVE #3	BERKELEY CA	94710
West Berkeley Association of Industrial Companies	PO BOX 2307	BERKELEY CA	94702
Berkeley Central Library	2090 KITTREDGE STREET	BERKELEY CA	94704
Adams Broadwell Joseph & Cardoza	601 GATEWAY BLVD. Su 1000	SOUTH SAN FRANCISCO CA	94080
Public Notice Journal	PO Box 330356	SAN FRANCISCO	94133
OCCUPANTS	1005 PARKER ST	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 207	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 145	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 220	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 227	BERKELEY CA	94710
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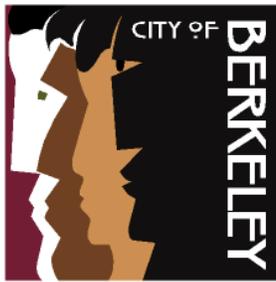
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OCCUPANTS	2600 TENTH ST 346	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 518	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 123	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 328	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 706	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 108	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 230	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 609	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 546	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 208	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 602	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 267	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 202	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 626	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 255	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 527	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 513	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 629	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 257	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 302	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 125	BERKELEY CA	94710

OCCUPANTS	2600 TENTH ST 718	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 433	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 423	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 624	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 430	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 551	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 151	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 241	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 326	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 115	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 114	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 412	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 237	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 219	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 651	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 311	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 318	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 619	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 523	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 211	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 705	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 403	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 137	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 259	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 150	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 515	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 314	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 234	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 106	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 239	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 434	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 422	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 131	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 225	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 544	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 539	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 344	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 526	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 431	BERKELEY CA	94710
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OCCUPANTS	2600 TENTH ST 501	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 507	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 607	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 406	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 247	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 141	BERKELEY CA	94710
OCCUPANTS	2600 TENTH ST 249	BERKELEY CA	94710
OCCUPANTS	2657 NINTH ST	BERKELEY CA	94710
OCCUPANTS	1011 CARLETON ST	BERKELEY CA	94710
OCCUPANTS	1050 PARKER ST	BERKELEY CA	94710
OCCUPANTS	2621 TENTH ST	BERKELEY CA	94710
OCCUPANTS	2608 SAN PABLO AV	BERKELEY CA	94710
OCCUPANTS	2627 TENTH ST	BERKELEY CA	94710
OCCUPANTS	2612 SAN PABLO AV	BERKELEY CA	94702
PARKER STREET PROPERTIES LLC	920 HEINZ AVE	BERKELEY CA	94710
2600 TENTH STREET LLC	1120 NYE ST #400	SAN RAFAEL CA	94901
2600 TENTH STREET LLC	1120 NYE ST #400	SAN RAFAEL CA	94901
KAISER FOUNDATION HEALTH PLAN INC	1800 HARRISON ST 19TH	OAKLAND CA	94612
LISA VOGEL	1120 NYE STREET	SAN RAFAEL CA	94901



# N O T I C E O F A D M I N I S T R A T I V E D E C I S I O N

## 2600 Tenth Street

Administrative Use Permit #ZP2023-0031

**To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.**

**ZONING OFFICER DECISION:** The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

**DATE NOTICE IS ISSUED: November 13, 2023**

**APPEAL PERIOD:** November 14, 2023 to December 4, 2023

**ATTACHMENTS:**

1. Findings and Conditions
2. Project Plans, dated received March 9, 2023

**FOR FURTHER INFORMATION:**

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Nilu Karimzadegan at (510) 981-7430 or [nkarimzadegan@berkeleyca.gov](mailto:nkarimzadegan@berkeleyca.gov).

**PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):**

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.

1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420

E-mail: [planning@berkeleyca.gov](mailto:planning@berkeleyca.gov)

2600 TENTH STREET

Page 2 of 2

NOTICE OF ADMINISTRATIVE DECISION

Administrative Use Permit #ZP2023-0031

**TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):**

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
  - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
  - C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

### 2600 Tenth Street

#### Administrative Use Permit #ZP2023-0031

**To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.**

#### PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

#### CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

#### FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097<sup>1</sup>, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

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<sup>1</sup> [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:
- (1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:
- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
  - The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
  - The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
  - The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.
6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:
- (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
  - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.
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## STANDARD CONDITIONS

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The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, apply to this Permit:

### 1. Conditions Shall be Printed on Plans

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

### 2. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

### 3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

### 4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

### 5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

### 6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Indemnification Agreement**

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

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

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

**10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

**Project Liaison**

Name

Phone #

**11.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

**Standard Construction-related Conditions Applicable to all Projects:**

- 12.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
- 13.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
- 14.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 15.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
- 16.** All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
- 17.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
- 18.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
- 19.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

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

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

**At All Times (Operation):**

24. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Transit Subsidy. If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.



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Prepared by: Nilu Karimzadegan  
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

**1ST FLOOR  
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

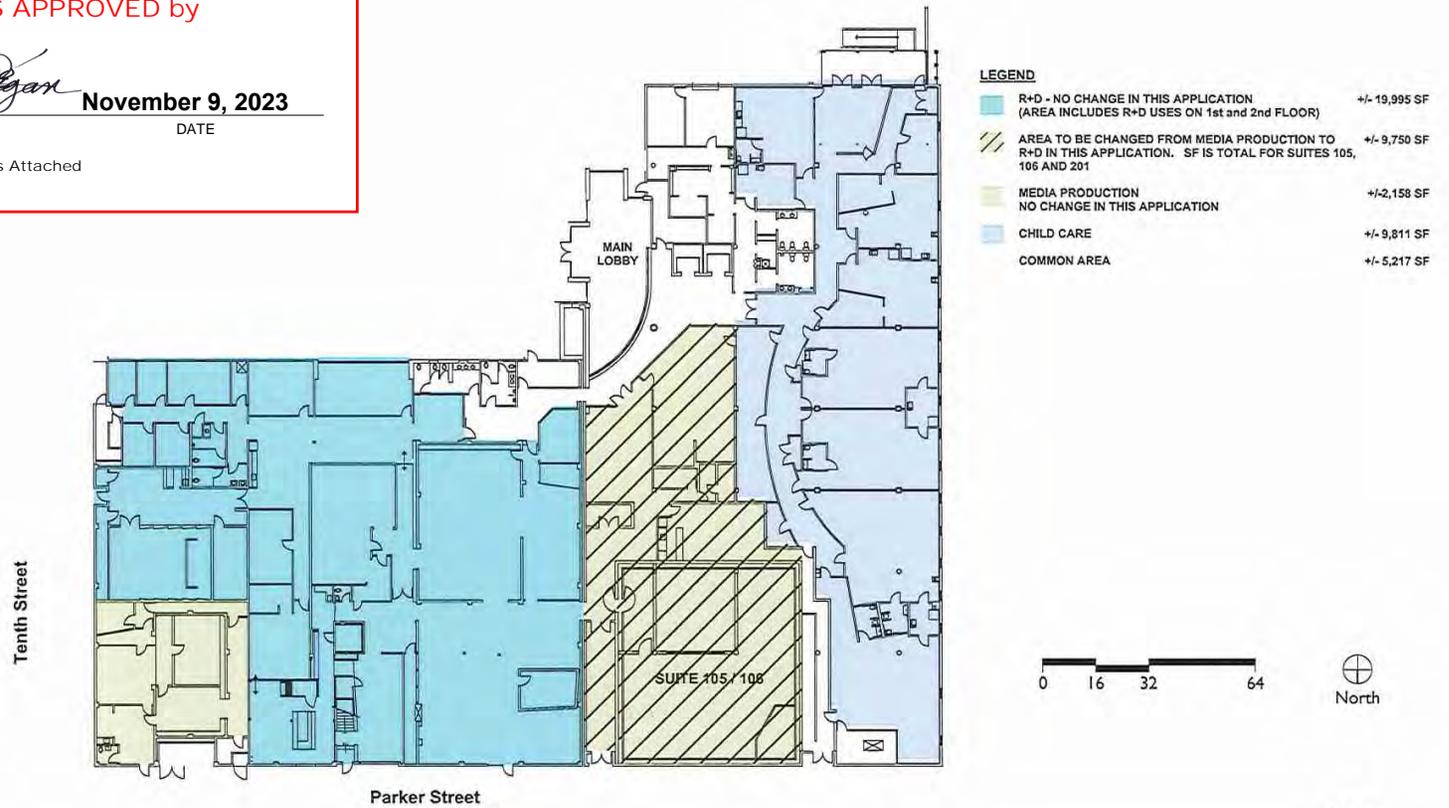


November 9, 2023

SIGNATURE

DATE

\*AUP Findings and Conditions Attached



**LEGEND**

	R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
	AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
	MEDIA PRODUCTION NO CHANGE IN THIS APPLICATION	+/- 2,158 SF
	CHILD CARE	+/- 9,811 SF
	COMMON AREA	+/- 5,217 SF



2600 TENTH STREET, BERKELEY CA

**2ND FLOOR  
 USE CHANGE EXHIBIT**

19 December 2022

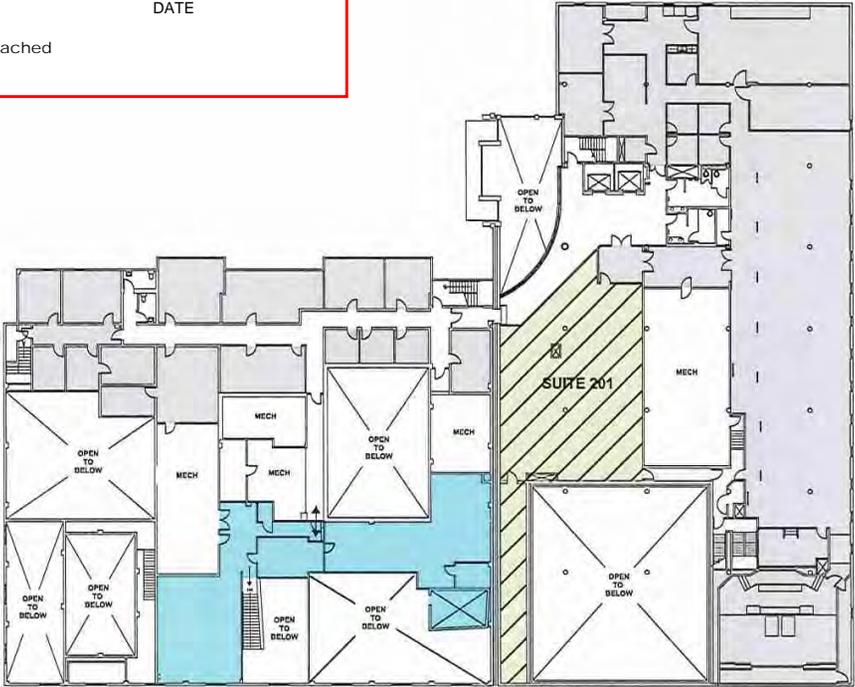
SCALE: 1/32"=1'-0"

**PLANS APPROVED by**

*Michael Degan* **November 9, 2023**

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

\*AUP Findings and Conditions Attached



**LEGEND**

<span style="color: lightblue;">■</span> R+D - NO CHANGE IN THIS APPLICATION (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR)	+/- 19,995 SF
<span style="color: lightgreen;">▨</span> AREA TO BE CHANGED FROM MEDIA PRODUCTION TO R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105, 106 AND 201	+/- 9,750 SF
<span style="color: lightgrey;">■</span> NO CHANGES TO THESE AREAS IN THIS APPLICATION	+/- 15,001 SF
COMMON AREA	+/-2,744 SF





1.

To: The City of Berkeley Zoning Officer, City of Berkeley Planning Department:

From: Appellants of Administrative Use Permit #ZP2023-0031 –

- Rick Auerbach (for WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

### **Appeal of 2600 Tenth Street Administrative Use Permit #ZP2023-0031**

We, the Appellants of this Use Permit, contend that the conditions cited in Planning staff's November 13, 2023 Notice of Administrative Decision to approve Administrative Use Permit #ZP2023-0031 have not been met and therefore this Use Permit should not have been approved and should be rescinded. The reasons for our contention are:

- 1.) Contrary to applicant's and staff's assertion that the spaces at issue are not subject to Zoning Ordinance Table 23.206-8, Section 23.206.050 C of the Berkeley Municipal Code - Protected Non-Industrial arts studio uses, we contend that they are covered under this provision. From the inception of the zoning Ordinance's Arts protections, "filmmakers", and later "video artist" were always included as one of the protected uses in this section of the BMC. It seems a classification calling them "Media Production" was implemented many years after protection was conferred upon them by Zoning Ordinance Table 23.206-8, Section 23.206.050 C. Contrary to staff's classification of these studio spaces as having been used as Media Production spaces, we contend that the previous use of these spaces by "filmmakers" and "video artists" confers "protected" status upon these spaces, meaning they can not be converted to a non-protected use without "equivalent space" being provided as required by BMC section **23.206.050 C. 4 (a)**.

#### **A.) Berkeley Municipal Code evidence that the spaces are "Protected Non-Industrial Uses."**

**Section 23.206.050 C.** addresses and defines **Protected Non-Industrial Uses** in the MULI. **Table 23.206-8 in Section 23.206.050 C.** establishes 2 categories of Protected Non-Industrial Uses in MULI;

Category 1 - Art/Craft Studio, and

Category 2 – 4). Fine arts performance, instruction and rehearsal studios (dance, music, theater)

5). Theaters, stage performance, but excluding motion picture theaters

The definition of an Art/Craft Studio in Table 23.206-8 and the activities that take place there are found in BMC Chapter 23.502 GLOSSARY, 23.502.020, Defined terms:

22. *Art/Craft Studio*: "An establishment engaged in the creation of art or crafts that requires artistic skill. Examples of individuals typically engaged in this work include...photographers/**filmmakers**,...**video artists**...and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition.

**23.206.050 - Protected Uses.,1. Protected Non-Industrial Uses Defined** further clarifies that "A use in the MU-LI...district listed in **Table 23.206-8** is classified as a protected non-industrial use, provided the use: (a) Was legally established as of July 6, 1989;

2.

Since the studios under discussion were "legally established as of July 6, 1989" and have been significantly and extensively used by "filmmakers" and "video artists", therefore these studios fall under BMC Section 23.206.050 C. - **Protected Non-Industrial Uses in the MULI**, and therefore **can not be converted to a non-protected use** without triggering the replacement requirement found in the C.4 (a) Findings provision of **23.206.050 C. 2. Permit Required for Change of Use:**

"To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category."

**B. Description by Applicant and City Planning Staff in Planning Staff reports of "recording and mixing studios"...and "screening rooms" as "Protected Uses":**

On the 2600 Tenth St website it stated: According to the Center's own website, the Center "provide(s) services for the **music, film, video...**communities. We are available for **film, video...**and special events." According to Berkeleyside, since Wareham's purchase, "The Fantasy Building has been used since then by independent **filmmakers...**"

The applicant (Wareham Development) and City staff, in 2008 in three instances within two separate COB Planning staff reports have declared "recording and mixing studios"...and "screening rooms" in 2600 Tenth St to be "protected uses" in the MULI district." These are the exact same uses staff now describes as non-protected "industrial" uses. Nothing has changed in the BMC since 2008 that would support planning staff's present redetermination in Use Permit #ZP2023-0031 that such spaces were not occupied by "protected uses" and are now "Media Production."

From FEBRUARY 14, 2008 Staff Report - 2600 Tenth Street Variance Request #07-10000132 to operate a child care center for children of Pixar employees: : Attachment 1-Findings and Conditions - VARIANCE FINDINGS:" "D. The facility houses over 40 different businesses and organizations that contribute to an interactive arts community. To support the operation's long term success, over the years the owner's (Wareham) have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, **which are "protected uses" in the MULI district.**"

GENERAL NON-DETRIMENT FINDING F. "The applicant could theoretically choose to convert existing recording studios or screening rooms to a child care center (a "protected use") with an administrative use permit because the MULI District **allows the conversion of one protected use to another** by the granting of an administrative use permit."

ZONING ADJUSTMENTS BOARD Staff Report - FOR BOARD ACTION FEBRUARY 14, 2008 2600 Tenth Street Variance #07-10000132

"Finally, the MULI District allows the conversion of one protected use to another by the granting of an administrative use permit. However, the conversion of such space would be contrary to the applicant's goal of retaining the **existing protected uses**, and therefore, the applicant requests a Variance to convert space that has been used as offices and storage to the proposed child care center."

3.

**In addition, the City of Berkeley has given numerous Use Permits for “film” uses in the exact kind of spaces that City staff and Wareham claim are “Media Production.” Some examples of this are permits given to:**

Frame X for “Video Post Production”

KuKu Studios for “Video Production”

PictureStartEdit permit for “Film/video”

Pizzicato Productions Documentary Film Production for “continuing legal use.”

IMDSRV Zoning Certificate for “Post Production Sound Services” for film

### **3. FINDINGS FOR APPROVAL of Administrative Use Permit #ZP2023-0031**

Planning staff states that: “As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the...general welfare of the persons...working in the neighborhood of such proposed use...or to the general welfare of the City...:

The appellants contend that the proposed project will be detrimental to those working in the neighborhood (in 2600 Tenth St) and to the general welfare of the City because:

- 1.) The storied documentary filmmakers, video artists and sound engineers working on film and video at 2600 Tenth St. are a long-standing and interconnected community where there is significant cross-pollination between the different artists. The conversion of this arts studio space to R&D removes space that has previously been used by artists and thus diminishes the opportunities for robust collaboration between artists, limiting their output, economic opportunities, and cultural and economic contributions to the “general welfare of the City.” Maintaining the spaces at issue as art spaces helps to keep the existing community of artists intact, bettering their opportunities for productive collaboration and economic success.

The Zoning Officer states that:

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A) than leaving the space intact because:

“Both the existing Media Production and proposed Research and Development uses are classified as “Industrial and Heavy Commercial Uses” so there is no change in the industrial nature of activities that can occur onsite”

“Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space...”

4.

The 2600 Tenth Street Administrative Use Permit #ZP2023-0031 states that, “as required by BMC Section 23.206.100 (A), “the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2)... (and) (3) Complies with the adopted West Berkeley Plan;

1

**The Appellants contend that the proposed Change of Use does not better serve the purposes of the district because:**

- 1.) The previous use of the spaces – as Staff makes clear in their 2008 Staff Reports that the spaces at issue were - and are - not “Industrial and Heavy Commercial Uses”, but Arts Uses clearly spelled out in BMC section Zoning Ordinance Table **23.206.050 C. 4 (a)**.
- 2.) The proposed R&D use is not consistent with “relevant policies set forth in the adopted West Berkeley Plan.”
- 3.) The proposed change of use is not (1) “consistent with the purposes of the District;”

**The Appellants contend that the proposed Change of Use is not “consistent with the purposes of the District;” as found in 23.206.080 MU-LI Mixed Use-Light Industrial District, because:**

The # 4 Purpose of the MULI District is to:

4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;

The West Berkeley Plan is clear that the majority of jobs in Research & Development require “advanced degrees” while there is no requirement for a degree to work in film and many who work as filmmakers, video, and sound artists are self-taught or have apprenticed or interned with others in order to learn their skills. Converting space that provides for “well-paid jobs which do not require advanced degrees” to space for those requiring advanced degrees is diametrically opposed to the MULI’s #4 Purpose.

The # 2 Purpose of the MULI District is to:

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

Since there are multiple millions of square feet available for R&D in the MULI District while there is likely only a few tens of thousands of square feet available for filmmakers, video artists, and sound artists, it is clear that any loss or conversion of this precious space would limit the “range” of compatible uses by further minimizing the film arts uses in the MULI.

**The Appellants contend that the proposed Change of Use does not does not comply with the adopted West Berkeley Plan because:**

The West Berkeley Plan clearly seeks to support arts and crafts enterprises, employment, and culture. The various Goals, Policies, and statements supporting the arts that are found in the Plan are cited below. WEBAIC believe that Use Permit #ZP2019-0090 not only does not abide by Plan Goals and Policies on protected arts uses, but violates and actively works in contradiction to these Goals and Policies:

5.

**The Economic Development Chapter (2)** of the West Berkeley Plan provides direct guidance on the issue of Arts and Crafts and their protections. The most critical and applicable provision of the West Berkeley Plan as it relates to this issue is found in:

**Economic Development - Goals and Policies - Goal 7:** "Protect small businesses, particularly arts and crafts businesses, so they can continue to flourish in West Berkeley."

**"Rationale:** Small businesses, especially arts and crafts businesses, are key in creating the unique character of West Berkeley. The City has developed Arts and Crafts zoning to protect these businesses. However, the zoning has not always worked as intended. It is vital to assure that arts and crafts enterprises are genuinely protected from displacement."

**5. Policy:** A. Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a vital part of the West Berkeley community.

**WEBAIC Comment:** Administrative Use Permit #ZP2023-0031 violates Goal 7's commitment to "protect arts and crafts...businesses...from displacement." It additionally violates Goal 7's Policy to "use zoning... to assure that artists and craftspeople remain a vital part of the West Berkeley community." In contradiction to the above WB Plan Goals and Policies, **AUP #ZP2023-0031 as constituted is a mechanism to displace arts and crafts enterprises and assures that artists (particularly endangered film and sound artists) do not "remain a vital part of the West Berkeley community"**.

**Economic Development (Chapter 2), A. Strategies for Business Retention VII. Implementation Measures, states:**

**. 2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance.** Goals and Policies Implemented: Goal 7, Policy 7A - Responsibility: City Planning Department, in consultation with affected parties. Funding: Regular staff funding

**Economic Development III. The Economic Future of West Berkeley - Economic Prospects by Sector:** "One of Berkeley's economic roles as a city--with a strong contribution from West Berkeley firms--is as a reservoir of ... artistic talent for the East Bay, the Bay Area, and... an even larger area."

Under The West Berkeley Plan's Economic Development section, **VII. Implementation Measures - Priority Implementation Activities, A. Ordinances, Regulation and Policy Development, is**

**West Berkeley Plan Appendices - Appendix B - Cultural Resources of West Berkeley**

5. "West Berkeley is an important locale for artists and craftspeople..." The strong community of artists and craftspeople which exists in West Berkeley is clearly such a resource." "In addition to being a locale where culture is enjoyed, it is also one where cultural products are created and produced."

The West Berkeley Plan's overriding goal is to retain the area's dynamic "economic mix" of uses. To accomplish this the West Berkeley Plan specifically called out R&D as a use that could displace Arts & Crafts because it is "supported by the market" while Arts & Crafts uses are NOT "supported by the market" and therefore require special zoning support (Arts/Crafts protections) to assure they "remain part of the mix."

6.

6.

**4.) (a) West Berkeley Plan Policies & statements regarding R&D being “supported by the market:**

**I. Economic Rationale of the Plan:** The City's economic policy must ...strike a balance between working within market... realities on the one hand, and guiding and regulating economic actors to achieve City goals on the other. ...a policy which passively followed dominant market forces would not necessarily achieve City economic goals (and would not require a Plan). Market forces...strongly support the development of advanced services (e.g. research laboratories).” “While support for advanced services (research laboratories) ...is also important, these sectors are generally supported, rather than threatened, by market developments. Thus, the policy structure for these sectors should be different.”

**In their application, the applicant states that**

3.) An abundance of existing and potential Research & Development space (millions of sq ft) exist in West Berkeley, thus this 20,000 sq ft does not need to be converted to R&D. What IS NEEDED in West Berkeley is the preservation of rare and in-demand studio space for film and sound artists:

In 2012 ,WEBAIC - in negotiations with City staff and councilmembers - agreed to allow 270,000 sq ft of industrially-protected warehouse space to be converted to Research and Development. The square footage limitation of such conversions sun-setted in 2016, allowing the millions of square feet of existing warehouse space to be opened to Research and Development uses, eliminating any need for this 20,000 sq ft to be converted. Additionally, Planning staff – with WEBAIC input - recently updated the definition of R&D which more easily allows this use to occupy West Berkeley’s millions of sq ft of warehouse space previously off-limits to R&D.

The applicant – Wareham Development \_ currently has close to one million square feet of space in Berkeley devoted to R&D and Life Sciences. They also have approximately four million square feet of mostly R&D and bioscience in the near East Bay.

Contrasting Wareham Development’s millions of square feet available for R&D to the very, very small amount (20-50 thousand?) of square feet of space in 2600 Tenth St that is available to artists making film, video, and sound, it is clear which use desperately requires space more to remain viable and which use doesn’t. Staff states in its required “Findings” that “additional Research and Development space, (will) maintain(ing) the existing character of the area.” The conversion of this unique film, video, and sound art space to R&D will absolutely NOT “maintain the existing character of the area.”

It will further displace an extremely unique world renown film arts community – one of, if not the, largest concentration of documentary filmmakers who have been nominated for and won numerous Academy Awards, Peabody Awards, Sundance Awards, and many, many “Best” awards at film festivals world-wide. There are millions of square feet available for R&D – at present a one million sq ft project at Aquatic Park ready for R&D leasing and another project with hundreds of thousands of square feet for R&D between 4<sup>th</sup> and 5<sup>th</sup> St, a few Blocks away from 2600 Tenth St. The conversion of this space and the other Arts space in the Fantasy building that Wareham has clearly stated it intends to convert as soon as it can will irreparably harm the “existing character of the area” that is now known as a nation center for film, video, and sound production.



Planning and Development Department  
Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

## ZONING ADJUSTMENTS BOARD NOTICE OF PUBLIC HEARING

**SUBJECT:** 2600 Tenth Street - APPEAL  
Administrative Use Permit #ZP2023-0031

**WHEN:** Thursday, April 25, 2024.  
Meeting starts at 7:00 pm.

**WHERE:** Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley  
(Wheelchair Accessible) with remote/hybrid option (via Zoom)

«NAME1»  
«NAME2»  
«ADDRESS1» «ADDRESS2»



Planning and Development Department  
Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
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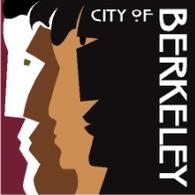
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«Next Record» «NAME1»  
«NAME2»  
«ADDRESS1» «ADDRESS2»

	<p><b>PROJECT: 2600 Tenth Street, Appeal of Zoning Officer's decision to approve Administrative Use Permit #ZP2023-0031</b> to change use of three tenant spaces (9,750 square feet) from Media Production to a Research and Development resulting in a total of 29,745 square feet of Research and Development space, and create up to nine tenant spaces within a seven-story building on a 114,998 square-foot lot.</p> <p><b>CEQA RECOMMENDATION:</b> Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").</p>
<p>Submit written comments:</p> <p>Land Use Division Attn: ZAB Secretary 1947 Center Street, Second Floor Berkeley, CA 94704 or via e-mail: <a href="mailto:zab@berkeleyca.gov">zab@berkeleyca.gov</a></p>	<p><b>All persons are welcome to attend the hearing virtually or in person. Comments may be made verbally at the public hearing and/or in writing before the hearing.</b> If your contact information is included in any communication to the Board, it will become part of the public record, and will be accessible on the City Website.</p> <p>All <b>application materials</b> are available by searching the address or permit number under the Zoning tab at <a href="https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx">https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx</a>.</p> <p><b>Draft agenda</b> posted online 14 days before the hearing. <b>Final agenda with Zoom link and staff reports</b> posted online six days before the hearing.</p> <p>Visit <a href="https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board">https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board</a> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.</p>
<p><b>Post and Mail Date: April 11, 2024</b></p>	<p><b>Disability-related accommodation(s) requests</b> to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418(V) or 981-6347(TDD) at least three business days before the meeting date.</p>
<p><b>NOTICE CONCERNING YOUR LEGAL RIGHTS:</b> If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing.</p>	

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<p>Submit written comments:</p> <p>Land Use Division Attn: ZAB Secretary 1947 Center Street, Second Floor Berkeley, CA 94704 or via e-mail: <a href="mailto:zab@berkeleyca.gov">zab@berkeleyca.gov</a></p>	<p><b>All persons are welcome to attend the hearing virtually or in person. Comments may be made verbally at the public hearing and/or in writing before the hearing.</b> If your contact information is included in any communication to the Board, it will become part of the public record, and will be accessible on the City Website.</p> <p>All <b>application materials</b> are available by searching the address or permit number under the Zoning tab at <a href="https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx">https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx</a>.</p> <p><b>Draft agenda</b> posted online 14 days before the hearing. <b>Final agenda with Zoom link and staff reports</b> posted online six days before the hearing.</p> <p>Visit <a href="https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board">https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board</a> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.</p>
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Internal

NAME1	NAME2	ADDRESS1	ADDRESS2
GENIRBERG FAMILY LIMITED PARTNERSHIP	101 N TRYON ST	CHARLOTTE NC	28246
ALWARD KEITH R TR	1035 CARLETON ST	BERKELEY CA	94710
2600 TENTH STREET LLC	1120 NYE ST #400	SAN RAFAEL CA	94901
FIERSTEIN FREDRIC J TR & GERST JOEL L & JOANN ETAL	1175 ARCH ST	BERKELEY CA	94708
2530 10TH LLC	1730 BLAKE ST	BERKELEY CA	94703
KAISER FOUNDATION HEALTH PLAN INC	1800 HARRISON ST 19TH FLR	OAKLAND CA	94612
BERKELEY UNIFIED SCHOOL DISTRICT	2020 BONAR ST	BERKELEY CA	94702
GUERRERO JUAN C & MARIA TRS	2127 6TH ST	BERKELEY CA	94710
MEJIA JUAN & MARIA S TRS	2321 8TH ST	BERKELEY CA	94710
PARKER ASSOCIATES	2560 9TH ST #117	BERKELEY CA	94710
BERKELEY CHESS SCHOOL	2622 SAN PABLO AVE	BERKELEY CA	94702
2618 SAN PABLO AVENUE LLC	28 MARINERO CIR 2	TIBURON CA	94920
WILLIG PROPERTIES LLC	30 KAMMERER CT	HILLSBOROUGH CA	94010
950 PARKER STREET INC	3530 WILSHIRE BLVD #1510	LOS ANGELES CA	90010
HURWICH JANET & BEVERAGE ROY S TRS	505 MONTGOMERY ST #1200	SAN FRANCISCO CA	94111
PARKER STREET PROPERTIES LLC	920 HEINZ AVE	BERKELEY CA	94710
ESLAMI AHMAD A	PO BOX 4623	BERKELEY CA	94704
OCCUPANT(S)	1005 PARKER ST	BERKELEY	94710
OCCUPANT(S)	1011 CARLETON ST	BERKELEY	94710
OCCUPANT(S)	1025 CARLETON ST	BERKELEY	94710
OCCUPANT(S)	1050 PARKER ST	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 1	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 2	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 3	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 4	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 5	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 6	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 7	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 8	BERKELEY	94710
OCCUPANT(S)	2530 TENTH ST 9	BERKELEY	94710
OCCUPANT(S)	2531 NINTH ST	BERKELEY	94710
OCCUPANT(S)	2542 TENTH ST	BERKELEY	94710
OCCUPANT(S)	2546 SAN PABLO AV	BERKELEY	94702
OCCUPANT(S)	2546 TENTH ST	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 101	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 102	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 103	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 104	BERKELEY	94710

Internal

OCCUPANT(S)	2550 NINTH ST 106	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 107	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 108	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 110	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 111	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 112	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 113A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 113B	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 114	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 115	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 201	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 202	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 203	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 204A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 204B	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 205	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 206	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 207A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 207B	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 208A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 208B	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 209A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 209B	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 210A	BERKELEY	94710
OCCUPANT(S)	2550 NINTH ST 210B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 115	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 117M	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 118	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 119	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 121	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 123A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 123B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 211	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 212	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 212M	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 213A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 213B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 214	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 214M	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 215	BERKELEY	94710

Internal

OCCUPANT(S)	2560 NINTH ST 216	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 217	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 218	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 219	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 220A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 220B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 311	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 312	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 313	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 314	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 315A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 315B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 316	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 317A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 319A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 319B	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 319C	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 320A	BERKELEY	94710
OCCUPANT(S)	2560 NINTH ST 320B	BERKELEY	94710
OCCUPANT(S)	2570 NINTH ST	BERKELEY	94710
OCCUPANT(S)	2600 SAN PABLO AV	BERKELEY	94702
OCCUPANT(S)	2600 SAN PABLO AV 1	BERKELEY	94702
OCCUPANT(S)	2600 SAN PABLO AV 2	BERKELEY	94702
OCCUPANT(S)	2600 SAN PABLO AV 3	BERKELEY	94702
OCCUPANT(S)	2600 TENTH ST	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 100	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 101	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 102	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 103	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 104	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 105	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 106	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 107	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 108	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 109	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 110	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 111	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 112	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 113	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 114	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 115	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 116	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 117	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 118	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 119	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 120	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 121	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 122	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 123	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 124	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 125	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 126	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 127	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 128	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 129	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 130	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 131	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 132	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 133	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 134	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 135	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 136	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 137	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 138	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 139	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 140	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 141	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 142	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 143	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 144	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 145	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 146	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 147	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 148	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 149	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 150	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 151	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 200	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 201	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 202	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 203	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 204	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 205	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 206	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 207	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 208	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 209	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 210	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 211	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 212	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 213	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 214	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 215	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 216	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 217	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 218	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 219	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 220	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 221	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 222	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 223	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 224	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 225	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 226	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 227	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 228	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 229	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 230	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 231	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 232	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 233	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 234	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 235	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 236	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 237	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 238	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 239	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 240	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 241	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 242	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 243	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 244	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 245	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 246	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 247	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 248	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 249	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 250	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 251	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 252	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 253	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 254	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 255	BERKELEY	94710
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OCCUPANT(S)	2600 TENTH ST 257	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 258	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 259	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 260	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 261	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 262	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 263	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 264	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 265	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 266	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 267	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 268	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 269	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 270	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 300	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 301	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 302	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 303	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 304	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 305	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 306	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 307	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 308	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 309	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 310	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 311	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 312	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 313	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 314	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 315	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 316	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 317	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 318	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 319	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 320	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 321	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 322	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 323	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 324	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 325	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 326	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 327	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 328	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 329	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 330	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 331	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 332	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 333	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 334	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 335	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 336	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 337	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 338	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 339	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 340	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 341	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 342	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 343	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 344	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 345	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 346	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 347	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 348	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 349	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 350	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 351	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 400	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 401	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 402	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 403	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 404	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 405	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 406	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 407	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 408	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 409	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 410	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 411	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 412	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 413	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 414	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 415	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 416	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 417	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 418	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 419	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 420	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 421	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 422	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 423	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 424	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 425	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 426	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 427	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 428	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 429	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 430	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 431	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 432	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 433	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 434	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 435	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 436	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 437	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 438	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 439	BERKELEY	94710

Internal

OCCUPANT(S)	2600 TENTH ST 440	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 441	BERKELEY	94710
OCCUPANT(S)	2600 TENTH ST 442	BERKELEY	94710
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Internal

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Internal

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Internal

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OCCUPANT(S)	2612 NINTH ST	BERKELEY	94710
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OCCUPANT(S)	941 CARLETON ST	BERKELEY	94710
OCCUPANT(S)	941 CARLETON ST 1	BERKELEY	94710
OCCUPANT(S)	948 PARKER ST	BERKELEY	94710
OCCUPANT(S)	950 PARKER ST	BERKELEY	94710
LISA VOGEL	1120 NYE STREET	SAN RAFAEL CA	94901
Rick Auerbach, WEBAIC	PO Box 2755	Berkeley CA	94702
David M. Bowman	2816 TENTH ST	BERKELEY CA 94710	
Laurie Bright	2626 SAN PABLO AVE	BERKELEY CA 94702	
Citizens Opposing Polluted Environment	1908 TENTH ST	BERKELEY CA 94710	

## Internal

Daughters for Social / Economic Change	PO BOX 2203	BERKELEY CA 94701
Merchants and Artists in West Berkeley	930 GRAYSON ST	BERKELEY CA 94710
Potter Creek-West Berkeley Group	2810 EIGHTH ST	BERKELEY CA 94710
San Pablo Neighborhood Council	2749 WALLACE ST	BERKELEY CA 94702
West Street (2300 Block) Association	2345 WEST ST	BERKELEY CA 94702
Parker Neighborhood Watch-1100 Block	1117 PARKER ST	BERKELEY CA 94702
Derby Street (1100 Block) Association	1112 DERBY ST	BERKELEY CA 94702
Oregon St (1100-1200 Block) Neighborhood	1208 OREGON ST	BERKELEY CA 94702
Russell Street (1400 Block) Neighborhood Watch Group	1433 RUSSELL ST	BERKELEY CA 94702
University of California, Facilities Services	A&E Building, Room 300 University of California Berkeley	Berkeley, CA 94720-1382
Urban Creeks Council	861 REGAL RD	BERKELEY CA 94708
Bananas Inc.	5232 CLAREMONT AVE	OAKLAND CA 94618
Heinz Avenue Arts Group	800 HEINZ AVE #3	BERKELEY CA 94710
West Berkeley Association of Industrial Companies	PO BOX 2307	BERKELEY CA 94702
Berkeley Central Library	2090 KITTREDGE STREET	BERKELEY CA 94704
Adams Broadwell Joseph & Cardoza	601 GATEWAY BLVD. Su 1000	SOUTH SAN FRANCISCO CA 94080

2600 Stacking Plan  
4<sup>th</sup> Floor

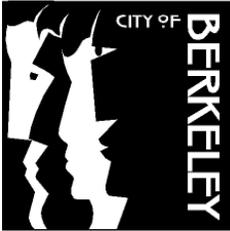


 Leased Spaces

2600 Stacking Plan  
6<sup>th</sup> Floor



 Leased Spaces



Planning and Development Department  
Land Use Planning Division

## PROOF OF SERVICE

DATE: May 6, 2024  
 TO: Whom It May Concern  
 FROM: Melinda Jacob, OSII  
 SUBJECT: **USE PERMIT #ZP2023-0031 – 2600 TENTH STREET**

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over eighteen years of age; that I am not a party to the within action; and that my business address is 1947 Center Street, Berkeley, California 94704. On this date, I served the following documents:

### **ZONING ADJUSTMENTS BOARD NOTICE OF DECISION**

On the parties stated below by placing true copies thereof in sealed envelope(s) addressed as shown below by the following means of service:

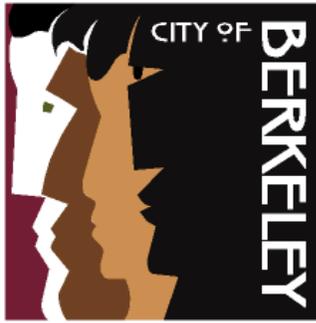
Lisa Vogel	2600 Tenth Street, LLC	Rick Auerbach
Wareham Development	1120 Nye Street	930 Grayson Street
1120 Nye Street	San Rafael, CA 94901	Berkeley, CA 94710
San Rafael, CA 94901		

- By First Class Mail - I am readily familiar with the City's practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.
- By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2024 at Berkeley, California.

*Melinda A. Jacob*

Melinda Jacob, OSII



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION:** April 25, 2024

**DATE NOTICE MAILED:** May 6, 2024

**APPEAL PERIOD EXPIRATION:** May 20, 2024

**EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)<sup>1</sup>** May 21, 2024

## 2600 Tenth Street

**Administrative Use Permit ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.**

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, upheld the appeal and **DENIED** the following permits:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

**ZONING:** MU-LI - Mixed-Use Light Industrial District

**APPLICANT:** Lisa Vogel, Wareham Development

**PROPERTY OWNER:** 2600 Tenth Street, LLC

**APPELLANTS:** Rick Auerbach (WEBAIC). Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt under the California Environmental Quality Act Guidelines, Section 15301 of the CEQA Guidelines (“Existing Facilities”).

<sup>1</sup> Pursuant to BMC Section 23.410.050(C), the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

ZONING ADJUSTMENTS BOARD  
April 25, 2024

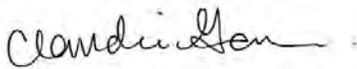
2600 TENTH STREET  
Page 2 of 4

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**FINDINGS FOR DENIAL ARE ATTACHED TO THIS NOTICE**

	Yes	No	Abstain	Absent	Recused
DUFFY	X				
KAHN					X
O'KEEFE	X				
SANDERSON	X				
THOMPSON				X	
GAFFNEY	X				
Yung		X			
TREGUB				X	
<b>BOARD VOTE:</b>	4	1		2	1

**ATTEST:**

  
Claudia Garcia, Zoning Adjustments Board  
Secretary

**PUBLICATION OF NOTICE:**

Pursuant to BMC Section 23.404.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7430 or [nkarimzadegan@berkeleyca.gov](mailto:nkarimzadegan@berkeleyca.gov). All project application materials, including full-size plans, may be viewed online at: <https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

ZONING ADJUSTMENTS BOARD  
April 25, 2024

2600 TENTH STREET  
Page 3 of 4

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**TO APPEAL THIS DECISION (see Section 23.410 of the Berkeley Municipal Code):**

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To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to "City of Berkeley"):
  - A. The fee for persons other than the applicant is \$1500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - B. The fee for all appeals by Applicants is \$5,520.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

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ZONING ADJUSTMENTS BOARD  
April 25, 2024

2600 TENTH STREET  
Page 4 of 4

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**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

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# ATTACHMENT 1

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## FINDINGS FOR DENIAL

APRIL 25, 2024

### 2600 Tenth Street

**Administrative Use Permit ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.**

#### **FINDINGS FOR DENIAL**

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1. As required by Berkeley Municipal Code (BMC) Section 23.406.040(E)(1), Findings for Approval, the Zoning Adjustments Board finds that the project, under the circumstances of this particular case existing at the time at which the application is granted, will be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - The building was developed as a film, video, and record production company. There are overlapping aspects of creative work that are included in the definition of Media Production and Arts/Crafts Studio, and the West Berkeley Plan intended to protect the work of all artists including filmmakers. The Arts/Crafts Studio definition includes filmmakers as an example of individuals engaged in the creation of arts or crafts that require artistic skill. Film makers are part of the creative community in Berkeley, their work is considered arts and should be protected.
  - Stand-alone use does not mean that it has to be within a stand-alone building and it does not refer to a single occupation on the site. These artistic and creative work spaces are small tenant spaces that had to obtain a business license to operate as Arts/Crafts Studio in that space. These uses are considered free standing in that they are self-contained. It is essential for the creative community to cluster and to be collaborative in their work as individual artists.
  - Because Art/Craft Studio is an existing a long-standing use within the building and is a protected non-industrial use in the Mixed-Use - Light Industrial Zoning District per BMC 23.206.050(B), the protected use provisions extend to all of the tenant spaces in the building.



By: Hand Delivery

May 9, 2024

Mr Mark Numainville  
City Clerk  
City of Berkeley  
2180 Milvia Street, First Floor  
Berkeley, CA 94704

**Re: Appeal to the City Council of the Zoning Adjustment Board's Decision to Uphold an Appeal of Administrative Use Permit ZP#2023-0031**

Dear Mr. Numainville,

Please accept this letter as Applicant's request to appeal the above decision made at the Zoning Adjustment Board (ZAB) meeting of May 2, 2024 to the City Council. Enclosed is a check in the sum of \$5,520 in payment of the appropriate appeal fee.

We believe that the ZAB's decision to uphold an appeal against an Administrative Use Permit (AUP) issued in November 2023 by the Zoning Officer to convert 9,750 SF at 2600 Tenth Street from Media Production to Research and Development was incorrect for several reasons. We will expand on these points further at the City Council meeting:

1. The ZAB decision contradicts both the Zoning Officer's findings in granting the AUP and the Planning Department staff's recommendation that the appeal be dismissed. The Staff Report contains a detailed point-by-point rebuttal of all the arguments raised by the appellants. The appellants assert that the use within the AUP area and other areas of the building is not Media Production but is instead Art/Craft studios. The Staff Report rightly states that "the existing film production use most accurately meets the **Media Production** definition."
2. The decision did not recognize that the 9,750 SF subject to the AUP was previously used for Audio Recording which is clearly defined as **Media Production** in BMC 23.502.020. All this area lies within the former premises of Fantasy Recording Studios, which operated at the building until operations ceased in 2018. The 9,750 SF is vacant - no tenant in the building will be displaced by changing the use from Media Production to Research and Development.
3. The findings for denial state: "These artistic and creative workspaces are small tenant spaces that had to obtain business licenses to operate as Arts/Crafts Studios in that space" and that Art/Craft Studio is a "long-standing use within the building" both of which are incorrect statements. The Staff Report indicates that Planning staff researched City records but did not find any Business Licenses issued at the building with an approved use of Art/Craft Studio before the cut-off date for establishment of a protected use of July 6, 1989.

Mr Mark Numainville  
May 9, 2024  
Page 2 of 2

4. The findings are based on the false premise that since filmmakers should be considered as artists, their places of business must be Art/Craft Studios. The Media Production definition also recognizes the artistic nature of filmmaking and commences with “*Commercial arts and art-related services...*”

The ZAB members misinterpreted *commercial arts* to mean activities such as the making of corporate training videos (at the suggestion of one of the appellants to the AUP) whereas the BMC 23.502 Glossary defines commercial activities to be *any use determined to be a business activity*, which would encompass the work of the filmmakers within the building.

5. Despite there being some overlap in the BMC 23.502.020 definitions of Media Production use and Art/Craft Studio use, the characteristics of the premises used by the filmmakers at 2600 Tenth Street, and the nature of their production work performed at the building, fit much more logically within the Media Production use. That definition reads:

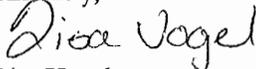
*Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.*

In contrast, the Art/Craft Studio use definition includes *photographers/filmmakers* in a list of typical occupants who create physical products within their premises such as woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weaves, jewelry makers, painters and fine art print makers...

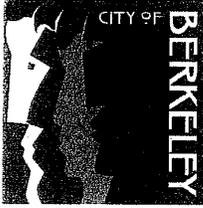
6. As the Staff Report highlights, Appendix B to the West Berkeley Area Plan notes the important creative activities of film, video and record production companies located at the Fantasy building in addition to (and hence not part of) the arts and crafts studios located in West Berkeley.
7. The ZAB decision and future application by the City of its findings would constitute an impermissible taking of property under the California and United States Constitutions. Any requirement or policy that space within 2600 Tenth Street must be devoted to Art/Craft Studio uses would deny the owner economically viable use of the building. Purchase and improvement of, and investment into, the property were based upon more permissive, remunerative uses to the degree that such shift in City policy and Code interpretation would frustrate the owner’s reasonable, investment-backed expectations and require compensation for the loss.

We look forward to presenting our appeal to the City Council. Please do not hesitate to contact me should you have any questions.

Sincerely,



Lisa Vogel  
for Wareham Property Group  
on behalf of 2600 Tenth Street, LLC



City Clerk Department

May 31, 2024

Chris Barlow  
Wareham Development  
1120 Nye Street, Suite 400  
San Rafael, CA 94901

RE: 2600 Tenth Street – Appeal ZAB Decision Administrative Use Permit #2023-0031

Dear Appellants:

This will acknowledge receipt of your appeal of the Zoning Adjustments Board decision of April 25, 2024, denying the following permits:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

Your appeal has been referred to the Planning Department.

The Planning Department will transmit to Council a statement setting forth the reasons for the Zoning Adjustments Board decision. This report, as well as a copy of the appeal, will appear on the Council agenda of **July 30, 2024**.

**This meeting of the Council will commence at 6:00 p.m. and will be held in the School District Board Room located at 1231 Addison Street.** The meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.

Pursuant to the City Council Rules of Procedure, this appeal will appear on the City Council's agenda as a public hearing. Time shall be provided for five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants collectively shall have five minutes to comment and the applicant shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment.

RE: 2600 Tenth Street – Appeal ZAB Decision Administrative Use Permit #2023-0031 Page 2

After the conclusion of the five-minute comment periods, members of the public may comment on the appeal pursuant to the Rules of Procedure in effect for the Council meeting.

The Council will then deliberate and determine to do one of three things: 1) continue the public hearing; 2) based on the record of the Council's consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Board's original action; or 3) remand the matter to the Board to reconsider the application, or any revisions thereto submitted after the Board's action.

Communications to the City Council that are received by the City Clerk pursuant to the following deadlines will be accepted and distributed as follows:

Submission Deadline	Distributed	Packet
July 15, 2024, by 5:00 p.m. (Monday)	Twelve days before the meeting (Thursday)	Agenda Packet
July 23, 2024, by 5:00 p.m. (Tuesday)	Five days before the meeting (Thursday)	Supplemental 1
July 29, 2024, 12:00 p.m. (Monday)	By 5:00 pm the day before the meeting (Monday)	Supplemental 2

Communications should be submitted directly to the City Clerk to ensure receipt by all Councilmembers. Electronic communications may be submitted to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) for immediate distribution to the Mayor, each City Councilmember, and the City Clerk for inclusion in the official record. Please note that for communications submitted in hardcopy, if the communication includes maps or photos or any other material not reproducible on a copy machine, fifteen copies should be provided to the City Clerk.

Please note that Berkeley's Lobbyist Registration Act (Berkeley Municipal Code Chapter 2.09) is effective beginning on January 1, 2020. Information and resources regarding the Lobbyist Registration Act are available from the City's website at:  
<https://berkeleyca.gov/your-government/lobbyist-registration>

If you have any additional questions regarding this matter, please do not hesitate to contact me at (510) 981-6908.

A copy of the staff report and a City Council agenda will be available from this office upon request after 4:00 p.m. on Thursday, July 18, 2024 or can be viewed on our website at: <https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Sincerely,



Mark Numainville  
City Clerk

RE: 2600 Tenth Street – Appeal ZAB Decision Administrative Use Permit #2023-0031 Page 3

cc: Jordan Klein, Director of Planning  
Anne Hersch, Land Use Planning Manager  
Nilu Karimzadegan, Staff Planner  
Farimah Brown, City Attorney  
Chris Barlow (Applicant)  
2600 Tenth Street, LLC (Owner)  
Rick Auerbach (Interested Party)

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) Pursuant to Government Code Section 66020(d)(1), the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period. 3) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

