ZONING ADJUSTMENTS BOARD
MEMORANDUM

SEPTEMBER 26, 2024

To: **Zoning Adjustments Board**

From: **Lisa Gordon, Contract Planner**
Claudia Garcia, Principal Planner

Subject: **2300-2310 Ellsworth Street (#ZP2023-0024)**

BACKGROUND

Comments Received from the Rent Stabilization Board

At its regular meeting on September 19th, 2024, the Berkeley Rent Stabilization Board discussed the development application for the 2300-2310 Ellsworth Street project (project). The Rent Stabilization Board members directed Rent Board staff to contact Riaz Capital (project applicant) and state their opposition to the project. The email communication from the Rent Board to the project applicant references the City's new Demolition Ordinance (Berkeley Municipal Code Chapter 23.326) that became effective on August 10, 2024.

The communication also referenced Rent Board Resolution 23-34 which authorizes the Executive Director or Chair of the Rent Stabilization Board to appeal any decision of the Zoning Adjustments Board (ZAB) or any Zoning Officer decision that allows for the elimination of residential rental units that are covered by rent stabilization or just cause for eviction without adequately mitigating their loss, or when the Planning staff decides that the subject units are not "controlled units" after receiving a contradictory determination from the Rent Board.

In response to this correspondence, Planning Staff has prepared this memorandum to clarify the calculation of replacement units pursuant to Government Code Sections 65915 (Density Bonus) and 66300 (SB 330), applicability of the City's new Demolition Ordinance, and applicability of the Rent Board Resolution 23-34. This memorandum also includes a proposed edit to the Findings and Conditions document for the project.

ANALYSIS

I. Replacement of Residential Units

The project site contains 12 existing rent-controlled residential dwelling units. These units are proposed for demolition to construct the new 69-unit residential building.

Government Code Section 65915 (Density Bonus) and Government Code Section 66300 (Senate Bill [SB] 330) prohibits the demolition of occupied or vacant protected units (i.e., rent-controlled or affordable units) unless the project will create at least as many residential units as will be demolished and will replace them with at least as many residential dwelling units as the greatest number of units that existed on the project site within the last five years. When the income levels of the existing tenants or tenants within the last five years are unknown, Government Code Section 65915 requires that the demolished units be replaced with "equivalent" units of affordability levels that are the same or lower than the income distribution of renters for City of Berkeley according to the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) database. For this project, the income levels for existing tenants were not available, so the replacement units were calculated using CHAS data in accordance with the Government Code.

According to the CHAS data, the affordability distribution of the twelve replacement units for the proposed project must include:

- Five (5) Extremely Low-Income (ELI) units
- Two (2) Very Low-Income (VLI) units
- Two (2) Low-Income units (LI)
- One (1) Moderate-Income unit (MI), and,
- Two (2) Market Rate units

The original staff report did not clarify that two (2) of the market rate units were being counted towards meeting the required number of replacement units.

Current occupants of protected units are entitled to relocation benefits and a right of first refusal of a comparable unit in the new housing development. According to the applicant, there are two tenants remaining in the building and both have signed relocation agreements, with one tenant planning to return to the building after construction of the project.

II. Applicability of New Demolition Ordinance

The SB 330 preliminary application for the project was deemed complete on February 10, 2023. This vested the development regulations and 'locked in' the standards effective at the time of application completeness. Therefore, the project is only subject to the ordinances, policies and standards that were adopted and in effect when the preliminary application was deemed complete. The new Demolition Ordinance was adopted on July 9, 2024 and became effective on August 10, 2024, *after* the preliminary application was deemed complete. Therefore, the project is not subject to the new Demolition Ordinance.

III. Applicability of Rent Board Resolution 23-34

Rent Board Resolution 23-34, adopted by the Rent Stabilization Board on December 21, 2023, authorizes the Board's Executive Director or Chairperson to appeal decisions of the Zoning Adjustment Board that allow for the elimination of rent-controlled residential units without adequately mitigating their loss with at least an equal number of permanently affordable replacement units. The Rent Stabilization Board believes that this project should provide 12 below market rate units (BMR) replacement units, not 12 units with income levels based on the CHAS data. In their communication to the project applicant, the Rent Stabilization Board and has indicated that they may appeal the project based on the authority granted under Resolution 23-34.

As of the writing of this memo, a meeting has been scheduled with Rent Stabilization Board Staff for Wednesday, September 25th to discuss the comments provided by the Rent Stabilization Board.

IV. Edits to Project Findings and Conditions

Text additions are denoted in underline, text deletions are demoted in ~~strikethrough~~.

Page 3, Section III "Density Bonus Findings", E, lists one waiver but should include three waivers (as noted on Page 1 and in the staff report):

- Waiver from BMC 23.202.140(E)(1)(a) to allow for an increase in building height – up to 87 feet 6 inches where a maximum of 75 feet (with a Use Permit) is allowed
- Waiver from BMC 23.202.140(E)(1)(a) to allow for the building height to be 7-stories when only 5-stories (with a Use Permit) are allowed.
- Waiver from BMC 23.202.140(E)(1)(a) to allow for a reduction in the minimum amount of open space

Page 6, Section V "Other Findings", C, has been updated to include 2 Market Rate protected units.

- The project will replace 12 removed protected dwelling units with equivalent units – 5 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households, 2 units affordable to Low-Income households, 1 unit affordable to Moderate-Income households and 2 Market Rate units, subject to a recorded affordability restriction of at least 55 years.

Page 26, Condition of Approval "Transportation Demand Management" – The project site is located in the Southside Area Plan and is therefore exempt from the requirement for transit benefits. The condition is revised to remove the transit benefit requirement.

1. **Transportation Demand Management.** Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the physical improvements required in BMC Sections 23.334.030(C) and 23.322.090 (bike parking) have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in Sections 23.334.030(C) and 23.322.090 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in these sections.

A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of Certificate of Occupancy or final inspection.

~~Consistent with Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.~~

i. One monthly pass for unlimited local bus transit service for every bedroom in each dwelling unit, up to a maximum of two benefits per dwelling unit.

ii. Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited adult monthly pass for unlimited local bus transit service monthly local bus pass.

B. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

C. Property owners may be required to pay administrative fees associated with compliance with this Condition.

The following condition of approval has been added to the project:

15. **Tenant Protections and Relocation Assistance**. Tenant protections and relocation assistance is required by both Berkeley's Demolition Ordinance and SB 330. For any units with tenants that move in after the application was submitted only SB 330's relocation requirements apply:

A. Pursuant to BMC 23.326.030(A)(5)(d), (i) sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building, and (ii) tenants of units that are demolished shall have the right of first refusal to rent new below market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues. (iii) Income restrictions do not apply to displaced tenants.

a. The maximum rent for such tenancies shall increase on January first of each year by no more than 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelvemonth period ending the previous June 30.

B. Pursuant to Government Code Section 66300(d)(2)(C), any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice.

C. Prior to issuance of the building permit, the applicant shall enter into a Regulatory Agreement to be reviewed, approved, and implemented by the Health, Housing and Community Services Department (HHCS), which will oversee and monitor the income qualification of returning tenants.

D. Pursuant to BMC 23.326.030(A)(5)(c), (i) the applicant shall provide qualified tenants assistance with moving expenses equivalent to those in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households), and (ii) shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City. The applicant shall submit proof of implementation that includes an overall building tenant relocation plan and relocation agreements all applicable tenant households prior to submittal for building permits.

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 26, 2024

2300-2310 Ellsworth Street

Use Permit #ZP2023-0024 to demolish two existing residential buildings that include 12 dwelling units (2306 and 2310 Ellsworth), merge two parcels into one (APNs 55-1886-2 and 55-1886-1), retain more than 50 percent of the exterior of the existing commercial building at 2300 Ellsworth, and construct a 72,824 square foot, seven-story (87.5 foot) multi-family housing development with 69 dwelling units, including five (5) Extremely Low-Income units, two (2) Very Low-Income units, two (2) Low-Income units, and one (1) Moderate-Income unit

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.020(A) to establish a Multi-Family Residential Use
- Use Permit pursuant to BMC Section 23.202.140(E)(3) to allow a height of up to 75 feet and 5 stories
- Use Permit pursuant to BMC Section 23.326.030 to demolish dwelling units
- Administrative Use Permit pursuant to BMC Section 23.202.140(E)(5) to increase the lot coverage up to 100 percent for a main building that contains dwelling units
- Administrative Use Permit pursuant to BMC Section 23.202.140(E)(5) to allow setback reductions in Residential Districts
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow for rooftop equipment projections above the height limit
- Administrative Use Permit pursuant to BMC 23.304.080(A) to allow a fence height greater than 6 feet along a lot line or within the required lot line setbacks for a main building

CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- No concessions are requested.
  - Waiver from BMC 23.202.140(E)(1)(a) to allow for an increase in building height – up to 87 feet 6 inches where a maximum of 75 feet (with a Use Permit) is allowed
  - Waiver from BMC 23.202.140(E)(1)(a) to allow for the building height to be 7-stories when only 5-stories (with a Use Permit) are allowed.
  - Waiver from BMC 23.202.140(E)(1)(a) to allow for a reduction in the minimum amount of open space

I. CEQA FINDINGS

A. 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 15332 of the CEQA Guidelines ("In-fill Development Projects").

B. The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project will not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions will address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

C. 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 will not affect any historical resource.

II. HOUSING ACCOUNTABILTY ACT FINDINGS

A. The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that: (1) the development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and (2) there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

B. The project includes construction of a "housing development project". Because the base project complies with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified.

III. DENSITY BONUS FINDINGS

A. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:

- Under the City's methodology for implementing density bonuses, the base project consists of 48 units;
- The project will provide at least 5 Extremely Low Income (ELI) and 2 Very Low Income (VLI) BMR units on site qualifying units in the 48-unit base project, as more fully set forth in Condition "Number of Below Market Rate Units";
- The project is entitled to a density increase of 42.5 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus one concession or incentive. This equates to a density bonus of up to 21 units above the base project, for a total of up to 69 units.

D. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concessions is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) would not be contrary to State or Federal law.

E. In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers to modify development standards as necessary to accommodate these density bonus units:

- Waiver from BMC 23.202.140(E)(1)(a) to allow for an increase in building height – up to 87 feet 6 inches where a maximum of 75 feet (with a Use Permit) is allowed
- Waiver from BMC 23.202.140(E)(1)(a) to allow for the building height to be 7-stories when only 5-stories (with a Use Permit) are allowed.
- Waiver from BMC 23.202.140(E)(1)(a) to allow for a reduction in the minimum amount of open space

F. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of waivers is required 1) to construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

IV. FINDINGS FOR APPROVAL

A. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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 project is consistent with all applicable R-SMU District standards and qualifies for a concession and waivers for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915.; and
- Shadows: According to the shadow studies submitted for the project, new shadow impacts will occur in the summer and spring months, around the hours of sunrise shadows will increase to the west at the Tang Center and a portion of the residential building at 2241 Durant, and in the hours around sunset, shadows would increase at St. Mark's Episcopal Church.

  Shadow impacts on adjacent residential uses are to be expected because the subject site is located in the Residential Southside Mixed-Use District (R-SMU), which allows heights of up to 85 feet without a use permit and roof top projections beyond the base height. The project is below the maximum height allowed in the R-SMU zone (83 feet to roof). Staff recommends that shadow impacts from the project will be reasonable and not detrimental; and,

- Views: The proposed project will not result in additional obstruction of significant views in the neighborhood because the area is generally flat, developed with three- to eight-story buildings and there are limited significant views as defined in BMC Section 23.502.020 (Defined Terms) available to residences in the area; and,
- The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project 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.

V. OTHER FINDINGS FOR APPROVAL

A. As required by BMC 23.326.020(B), the elimination or demolition of a dwelling unit will not be materially detrimental to the housing needs and public interest of any affected neighborhood or the City. The project will replace 12 demolished dwelling units with 69 dwelling units (5 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households, 2 unit affordable to Low-Income households, and 1 unit affordable to Moderate-Income households). The increase in the number of housing units would help meet the City's need for additional housing and Regional Housing Needs Assessment target.

B. The demolition of residential units is allowed because:

- Pursuant to BMC Section 23.326.030(A)(2), the existing units were not removed from the rental market under the Ellis Act at any time during the preceding five years, or there is no record of any verified cases of harassment or threatened or actual illegal eviction; and
- Pursuant to BMC Section 23.326.030(A)(3), ZAB finds that the demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community and the demolition is necessary to permit construction of at least the same number of dwelling units. The project will replace 12 dwelling units with 69 dwelling units (5 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households, 2 units affordable to Low-Income households, and 1 unit affordable to Moderate-Income households). The increase in the number of housing units will help meet the City's need for additional housing and Regional Housing Needs Assessment target, and thus the Finding under BMC Section 23.326.020(B) will be met. The project will also provide housing in proximity to regional transit, bicycle facilities, retail, and services, therefore reducing vehicle miles traveled, and air quality and greenhouse gas emission impacts. The proposed project will not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

C. Government Code Section 65915 (Density Bonus) and Government Code Section 66300 (SB 330) prohibit the demolition of occupied or vacant protected units (i.e. rent-controlled or affordable units) unless the project will create at least as many residential units as will be demolished; will replace them with at least as many residential dwelling units as the greatest number of units that existed on the project site within the last five years, and replace "protected" units as specified in these sections.

- The project site has held 12 ("protected") units (the greatest number of units that existed on the project site within the last five years), and is constructing 69 units, in compliance with state law.
- The project will replace 12 removed protected dwelling units with equivalent units – 5 units affordable to Extremely Low-Income households, 2 units affordable to Very Low-Income households, 2 units affordable to Low-Income households, 1 unit affordable to Moderate-Income households and 2 Market Rate units, subject to a recorded affordability restriction of at least 55 years.

D. As required by BMC Section 23.202.140 the project is consistent with the purposes of the underlying district. The proposed residential development is a high-density, multi-story residential development close to shopping, transportation and employment centers. The project site is three blocks east of Downtown Berkeley and within 0.4 miles of the Downtown Berkeley BART Station. The apartment project provides open space areas for residents consistent with BMC requirements and is close to other recreational opportunities. The project will redevelop an underutilized site containing two existing 6-unit apartment buildings and a commercial building. The project will replace the existing units with 69 apartment units, including 9 below market rate units. The existing façade of the commercial building will be retained to ensure that the new development complements the existing architectural character of the building and neighborhood. The project is consistent with the General Plan and Southside Area Plan. The project therefore, is consistent with the district purpose of the R-SMU zone.

E. As required by BMC Section 23.202.140(E)(3), the Zoning Adjustments Board finds that 50 percent or more of the total building floor area is designated for residential use and that the project meets the purposes of the R-SMU district. The project is a residential development and all floor area is designated for residential uses, therefore, more than 50% of the total building floor area is dedicated to residential use. As described in Finding E. above, the project meets the purposes of the R-SMU district.

F. As required by BMC Section 23.202.140(E)(5), the Zoning Adjustments Board finds that the reduction in setbacks is appropriate given the setbacks and architectural design of surrounding buildings. The project is a residential main building and is located north of Durant Avenue. The project proposes a reduction in the front, side and rear yard setbacks. The project site is bounded by Ellsworth Street to the east and Bancroft Way to the north. The site is surrounded by non-residential uses to the north, east and west. The existing commercial building is built to the property lines, so the existing setback is zero. The front façade is proposed to be retained and not demolished. The setbacks proposed for the project will be generally consistent with the existing buildings and surrounding buildings. The existing residential buildings south of the property are located about 3-5 feet from the proposed project's rear property line. The reduction in the rear setback is appropriate given the existing building setbacks, setback and architecture of surrounding buildings and the location of the project in an urban area.

G. As required by BMC Section 23.202.140(E)(5), the Zoning Adjustments Board finds that the increase in lot coverage is appropriate given the setbacks and architectural design of surrounding buildings. The allowed lot coverage is 45% for a five-story building located on a corner lot north of Durant Avenue. The project proposes a lot coverage of 80%. The project site is located in an urban area where it is typical for buildings to cover large portions of lots. The existing lot coverage for the site is 66%. The increase in lot coverage to 80% would be appropriate given the setbacks and architectural design of surrounding buildings.

H. As required by BMC Section 23.304.050(A), the Zoning Adjustments Board finds that the proposed rooftop equipment, which exceeds the district height limit, does not exceed 15 percent the average floor area of the building's floors. None of the equipment structures will be used as habitable or commercial space. The project will include a staircase/elevator penthouse totaling 372 square feet that will extend four feet over the 83-foot roof height. The penthouses represent less than 3.6 percent of the 10,260-square-foot average of all the floor areas.

I. As required by BMC Section 23.304.080(A), the Zoning Adjustments Board finds that the fence height greater than 6 feet along a lot line or within the required lot line setbacks for a main building meets the findings in BMC Section 23.204.130(I) as described in Section H above.

VI. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

1. **Conditions and Mitigation Monitoring and Reporting Program 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.

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 re-establish 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 comply 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 the Permit is modified by the Board. 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. **Pay Transparency Acknowledgement (BMC Section 13.104.030).** Prior to the issuance of a building permit for any Project subject to this Chapter:

A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.

B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

10. **Pay Transparency Attestations following Project Completion (BMC Section 13.104.040).** Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

11. **Posting of Wage Theft Ordinance (BMC Section 13.104.050).** Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

12. **Wage Theft Prevention Conditions of Approval (BMC Section 13.104.060).** The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under BMC Chapter 23.404.

13. **Hold Harmless.** The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

VII. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

14. **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 #

15. **Tenant Protections and Relocation Assistance.** Tenant protections and relocation assistance is required by both Berkeley's Demolition Ordinance and SB 330. For any units with tenants that move in after the application was submitted only SB 330's relocation requirements apply:

A. Pursuant to BMC 23.326.030(A)(5)(d), (i) sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building, and (ii) tenants of units that are demolished shall have the right of first refusal to rent new below market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues. (iii) Income restrictions do not apply to displaced tenants.

a. The maximum rent for such tenancies shall increase on January first of each year by no more than 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelvemonth period ending the previous June 30.

B. Pursuant to Government Code Section 66300(d)(2)(C), any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice.

C. Prior to issuance of the building permit, the applicant shall enter into a Regulatory Agreement to be reviewed, approved, and implemented by the Health, Housing and Community Services Department (HHCS), which will oversee and monitor the income qualification of returning tenants.

D. Pursuant to BMC 23.326.030(A)(5)(c), (i) the applicant shall provide qualified tenants assistance with moving expenses equivalent to those in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households), and (ii) shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City. The applicant shall submit proof of implementation that includes an overall building tenant relocation plan and relocation agreements all applicable tenant households prior to submittal for building permits.

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

17. **Construction Noise Reduction Program.** The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.

B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.

C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.

D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.

E. Prohibit unnecessary idling of internal combustion engines.

F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.

G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier will be effective at reducing noise.

H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

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

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

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

19. **Compliance with Conditions of Approval and Environmental Mitigations.** The building permit application is subject to verification of compliance of these Conditions of Approval and the adopted Mitigation Monitoring and Reporting Program (Attachment 2- Exhibit A). The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit $10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

20. **Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.

21. **Construction Noise Management -** Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

22. **Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.

23. **Construction and Demolition Diversion.** Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.

24. **Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. **Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527).** A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: City of Berkeley Community GIS Portal (arcgis.com)

B. Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.

C. **Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.

D. **Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

i. procedures for soil and groundwater management including identification of pollutants and disposal methods;

ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;

iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and

iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

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

E. **Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

i. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.

ii. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)

iii. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.

iv. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

F. Hazardous Materials Business Plan. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: http://cers.calepa.ca.gov/ for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

G. Petroleum Storage. An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or

ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: http://cers.calepa.ca.gov/. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

Prior to Issuance of Any Building (Construction) Permit

25. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.

26. Percent for Public Art. Consistent with BMC Section 23.316, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.

27. Affordable Housing Mitigation Fee. Consistent with BMC Section 22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.

28. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.

29. **Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.

30. **Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)

31. **Water Efficient Landscaping.** Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ETo) for Berkeley is 41.8.

32. **Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.

33. **Public Works ADA.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

AFFORDABLE HOUSING REQUIREMENTS – RESIDENTIAL PROJECTS

BELOW MARKET RATE UNITS

34. **Affordable Housing Mitigation Fee (AHMF).** Consistent with BMC 22.20.065 and fee resolution No. 68,074-N.S., the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, or provide an alternative to the fee payment as permitted by the BMC. Payment of the AHMF may be reduced if paid prior to the building permit per resolution No. 68,074-N.S., and shall be paid no later than prior to the issuance of a certificate of occupancy for the project.

As indicated on the development application, the applicant shall provide below market rate rental dwelling units ("BMR Units") and will be required to pay the AHMF as calculated in BMC Section 22.20.065(D). The applicant may elect to avoid the AHMF by providing, for the life of the project, a number of units equal to 20 percent of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households in accordance with the BMC. The applicant may also elect to provide BMR units below 20 percent of total units for a reduced AHMF as calculated in BMC Section 22.20.065(D). The applicant must contact and coordinate with the Department of Health, Housing and Community Services (HHCS) via email to affordablehousing@berkeleyca.gov for review and approval. The final number of affordable onsite units must be declared prior to issuance of the first building permit for the project.

35. **Number of Below Market Rate Units.** The project shall provide One (1) Moderate Income, Two (2) Low Income, Two (2) Very Low Income, and Five (5) Extremely Low Income below market rate rental dwelling units ("BMR Units"), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.

36. **Affordable Housing: Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit should they elect to provide BMR units to avoid or reduce their AHMF obligation. The Regulatory Agreement shall include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for very low income BMR Units shall be 50 percent of Area Median Income (AMI), and their maximum housing payment shall be 30 percent of 50 percent of AMI. The maximum qualifying household income for Low Income BMR units shall be 80 percent of Area Median Income (AMI), and their maximum housing payment shall be 30 percent of 80 percent of AMI for Low-Income households, as set forth in the following paragraphs of this condition. If the BMR units are occupied by Very Low-Income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Department of Health, Housing and Community Services (HHCS) via email to affordablehousing@berkeleyca.gov for review and approval.

37. **Affordable Housing: Below Market Rate Program.** In addition, affordable units must adhere to the administrative guidelines for the City's Below Market Rate program. These guidelines can be found online at https://berkeleyca.gov/community-recreation/affordable-housing-berkeley/below-market-rate-rental-information-owners-and.The guidelines are updated annually by HHCS and posted online. Please note the following key provisions from the guidelines:

A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to

B. California Health & Safety Code Section 50052.5 (h).

C. Rent shall include a reasonable allowance for utilities, as published and updated by the

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

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

F. Determination of Area Median Income (AMI):

- The AMI shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.
- The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

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

38. **Affordable Housing.** Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, then are required in the foregoing provisions.

39. **Affordable Housing.** Dwellings that are approved as rental units, but in which a condo map is approved prior to issuance of an occupancy permit, shall be subject to the affordability requirements within BMC 23.328 in effect on March 31, 2023. (A) Residential housing projects for the construction of five or more Dwelling Units; (B) Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four-unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter; (C) Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

40. **Affordable Housing – Density Bonus.** If a density bonus was granted for the project, the regulatory agreement shall reflect the number of qualifying units set forth in Section 65915(f)(4) that are needed to support the bonus that was granted.

Prior to Demolition or Start of Construction:

41. **Construction Meeting.** The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

42. **Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) may be required, particularly for the following activities:

    A. Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);

    B. Storage of building materials, equipment, dumpsters, debris anywhere in the public ROW;

    C. Provision of exclusive contractor parking on-street; or

    D. Significant truck activity.

    Please contact the Office of Transportation at (510) 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be stamped and signed by a registered engineer prior to submittal. The TCP shall be consistent with any other requirements of the construction phase. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

43. **Construction/No Parking Permits.** Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood.

During Construction:

44. **Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

45. **Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

46. **Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant.

A. Contact information (i.e. "hotline" phone number, and email address) for the project construction manager

B. Calendar and schedule of daily/weekly/monthly construction activities

C. The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.

47. **Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-** Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

D. All vehicle speeds on unpaved roads shall be limited to 15 mph.

E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.

H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

48. **Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:

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

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

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

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

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

49. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

50. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)

51. **Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

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

A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.

C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.

D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.

E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

53. **Human Remains (*Ongoing throughout demolition, grading, and/or construction*).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

54. **Paleontological Resources (*Ongoing throughout demolition, grading, and/or construction*).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

55. **Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

56. **Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.

E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. All private or public projects that create and/or replace 5,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological). (Project required to meet applicable code at time of building permit application, if different from above.)

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

I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

J. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.

K. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

L. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

57. **Public Works.** 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.

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

59. **Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

60. **Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

61. **Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

62. **Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

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

Prior to Final Inspection or Issuance of Occupancy Permit:

64. **Compliance with Conditions and Environmental Mitigations.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.

65. **Compliance with Approved Plans.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 20, 2024.

66. **Parking Meters or Pay Stations.** Any existing parking meters or pay stations to be removed will need to be removed by City of Berkeley staff or their contractor. A 3-4 week lead time will be required to coordinate removal. The City of Berkeley or their contractor shall install parking pay stations and/or parking meter heads. Coordination is required for this work and fees will be assessed by the City of Berkeley to complete this work. Coordinate installation of parking pay station and parking meter heads with Samantha Baker. Coordinate payment of parking pay station installation fees and/or parking meter head installation fees with Samantha Baker (510) 981-6472/sbaker@cityofberkeley.info. The approximate fee to install one pay station is $950. Parking meter head installation shall be charged at a rate of approximately $150/hour per City staffer.

67. **Number of Below Market Rate Units.** Should the Applicant elect to provide BMR units prior to receiving a building permit for the Project, they are entitled to eliminate or receive a proportional reduction in the AHMF consistent with BMC Section 22.20.065. The BMR Units shall be designated in the Regulatory Agreement; comply with the City's BMR administrative guidelines; shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City. Any additional BMR units the applicant may choose to provide must also conform with these conditions.

68. **Transportation Demand Management.** Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the physical improvements required in BMC Sections 23.334.030(C) and 23.322.090 (bike parking) have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in Sections 23.334.030(C) and 23.322.090 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in these sections.

    A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of Certificate of Occupancy or final inspection.

B. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

C. Property owners may be required to pay administrative fees associated with compliance with this Condition.

At All Times:

69. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit.

70. Transportation Demand Management Compliance. A Transportation Demand Management compliance report shall be submitted to the Zoning Officer, on a form acceptable to the City, prior to occupancy, and on an annual basis for ten years thereafter, which demonstrates that the project complies with the applicable requirements. After three years of timely compliant submittals, staff has the option to accept less frequent submittals (minimum one every three years). Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).

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

72. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

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

74. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

75. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

76. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.

77. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Finance Department, Customer Service Center shall add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts.

78. Required Bike Parking. Secure and on-site bike parking for at least 103 bicycles (95 long-term and 8 short-term spaces) bicycles shall be provided for the life of the building.

79. **Tenant Notification.** The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service, and entertainment uses, and that each occupant shall not seek to impede their lawful operation.

80. **Transit Subsidy Condition.** 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 as per BMC Chapter 9.88.

81. **Periodic Review and Reporting.** The City may require periodic review of this approved project to verify compliance with permit requirements and conditions of approval. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement. This permit is subject to the provisions of BMC Section 23.404.080 (Permit Revocation) if violations of the permit requirements are found by the Zoning Officer.

82. 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.

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Berkeley Chamber Letter of Support: 2300 Ellsworth
Attachments: Berkeley Chamber - Letter of Support - Ellsworth.pdf

From: Beth Roessner <beth@berkeleychamber.com>
Sent: Monday, September 23, 2024 3:54 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: Berkeley Chamber Letter of Support: 2300 Ellsworth

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello ZAB-

Please see the attached letter of support for the 2300 Ellsworth project.

Thank you in advance for your consideration.

Best,
Beth

Beth Roessner, CEO
Berkeley Chamber
1834 University Ave.
Berkeley, CA 94703
(510) 549-7000
www.berkeleychamber.com

UPCOMING EVENTS

OCT 5 | Ribbon Cutting & Community Potluck @ Adeline Yoga
OCT 9 | Sunrise Wellness Mixer @ White Magnolia Acupuncture & Tai Chi
OCT 17 | Business After Hours @ Study Hall Rooftop Lounge
NOV 13 | Artificial Intelligence (AI): Unlocking the Power of ChatGPT @ ONLINE WORKSHOP
NOV 15 | Getting a Berkeley Business License @ ONLINE WORKSHOP
DEC 5 | Berkeley Holiday Gift Fair @ Hotel Shattuck Plaza - applications coming soon!

September 24, 2024
Zoning Adjustments Board
City of Berkeley

Re: Support New Housing Development at 2300-2310 Ellsworth St.

To Whom It May Concern:

On behalf of the Berkeley Chamber of Commerce, I write to urge your support for the proposed development at 2300 Ellsworth Street by Riaz Capital. The project will provide 69 new units of housing and will advance our goals of providing support to our business members as well as provide greater success and growth to the business community and economy.

In September of 2023 our board of directors received a presentation by the development team and offered their support for the project. The design aligns with and compliments important land-use goals set by the City of Berkeley, which seek to increase the supply of dense and walkable student housing in the Southside Area.

We support Riaz Capital's commitment to preserve the existing building façade and their integration of the new project with the existing façade. This is an ideal neighborhood for this development, the project is located in a key location that links Downtown, Telegraph District and the new proposed "Ellsworth Extension", the new University pedestrian entrance. The revitalization of this site will also serve to enhance the public realm with new and improved landscaping, sidewalks and pedestrian lighting.

Other project benefits include:

- $160,724 contribution to Affordable Housing Mitigation Fund (in addition to the 9 BMR units provided on-site)
- $220,020 payment to Berkeley Unified School District
- $145,000 contribution to Public Art Fund as well as a mural to be painted on the building's exterior
- Estimated $645K in additional incremental annual tax revenue compared to existing site
- All-electric building with rooftop solar panels
- Drought-tolerant, native, and pollinator-supporting landscaping

The Chamber of Commerce is excited to see this project move forward and bring much needed housing to Berkeley. We ask for your support to ensure the project's timely and successful completion and thank you for your commitment to promoting greater equity, inclusion, and sustainability in Berkeley.

Sincerely,

Beth Roessner
CEO, Berkeley Chamber of Commerce

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: [EXT] Demolition of Rent-Controlled Units at 2306 and 2310 Ellsworth Street

Importance: High

From: Lisa Gordon <lgordon@rinconconsultants.com>
Sent: Monday, September 23, 2024 8:53 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Cc: Garcia, Claudia <CGarcia@berkeleyca.gov>; Updegrave, Samantha <SUpdegrave@berkeleyca.gov>
Subject: FW: [EXT] Demolition of Rent-Controlled Units at 2306 and 2310 Ellsworth Street
Importance: High

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Good Morning,

The email below was received in response to the project on the ZAB's 9/26 agenda – 2300-2310 Ellsworth ZP#2023-0024. Please include as supplemental communication for this item.

Thank you,
Lisa

From: Bursell, Lief <LBursell@berkeleyca.gov>
Sent: Friday, September 20, 2024 3:37 PM
To: Lisa Vilhauer <lvilhauer@riazcapital.com>
Cc: Garcia, Claudia <CGarcia@berkeleyca.gov>; Lisa Gordon <lgordon@rinconconsultants.com>; Williams, DeSeana <DeWilliams@berkeleyca.gov>
Subject: [EXT] Demolition of Rent-Controlled Units at 2306 and 2310 Ellsworth Street
Importance: High

CAUTION: This email originated from outside of Rincon Consultants. Be cautious before clicking on any links, or opening any attachments, until you are confident that the content is safe .

Dear Lisa Vilhauer,

At its regular meeting on September 19th, 2024, the Berkeley Rent Board discussed the development application for the project at 2300-2310 Ellsworth Street (Use Permit #ZP2023-0024), which proposes to demolish 12 rent-controlled residential units to allow for the construction of a new development with 69 residential units. The elected Rent Board commissioners were disappointed to learn that the Ellsworth project proposes only 10 below market rate (BMR) units, less than the existing number of rent-controlled units, and asked Rent Board staff to contact you in order give you advanced notice of the Board's opposition to the project.

The Berkeley Rent Board has worked closely with the Berkeley City Council, through the 4x4 Joint Task Force Committee on Housing, to put forth a demolition policy that requires one-for-one replacement of rent-controlled units with at least an equal number of below-market-rate replacement units. This policy is reflected in both the Demolition Ordinance replacement provisions that apply to the Ellsworth project and in the newly amended Demolition Ordinance that was passed by Council on June 25, 2024. On December 21, 2023, the Berkeley Rent Board also passed Resolution 23-43,

which authorizes the Rent Board's Executive Director or the Rent Board Chairperson to appeal decisions of the Zoning Adjustment Board that allow for the elimination of rent-controlled residential units without adequately mitigating their loss with at least an equal number of permanently affordable replacement units.

Consistent with longstanding City of Berkeley policy and Rent Board Resolution 23-43, the Board's position is that the potential loss of twelve rent-controlled units at 2306 and 2310 Ellsworth Street is best mitigated by the creation of at least twelve below-market-rate replacement units. The Board opposes the approval of Use Permit #ZP2023-0024 unless the number of BMR replacement units are increased by at least 2 additional units.

Please feel free to contact me if you have any questions about the Board's position on this matter.

Sincerely,

Lief Bursell
Senior Planner
(510) 981-4919

Rent Stabilization Board
2000 Center Street, Suite 400 | Berkeley, CA 94704
rentboard.berkeleyca.gov

We Moved! Our NEW office is located at 2000 Center Street, Suite 400.