

Location:	3830 (“3832”) MacArthur Blvd. (APN: 030 -1912-014-00) (see reverse)
Proposal:	To establish a 2,054 square-foot restaurant (“Rico’s Grill) with a 690 square-foot dining room. The restaurant would serve beer & wine and close no later than 10:00PM.
Contact Person/ Phone Number:	Rico Rivera (510) 842-3511
Owner:	Louis & Marita Rivera
Planning Permits Required:	Major Conditional Use Permit with special findings to allow sale of alcoholic beverages at a full-service restaurant located on a ‘restricted street’ (OMC Sec. 17.102.210(B)(2), 17.134.020(A)(2)(a)(viii)); Minor Conditional Use Permit with special findings to allow a General Food Sales Commercial Activity in the C-31 Zone (OMC Sec. 17.48.040(C) & 100, 17.134.020(B))
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-31 Special Retail Commercial Zone
Environmental Determination:	Exempt, Section 15301(e) of the State CEQA Guidelines: Existing Facilities (Alterations to Existing Structures); Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning
Historic Status:	Potential Designated Historic Property (PDHP); Survey rating: C2+ (ASI contributor, secondary importance or superior example)
Service Delivery District:	IV – San Antonio/Fruitvale
City Council District:	4 - Councilmember Quan
Date Filed:	April 16, 2009
Action to be Taken:	Decision based on staff report
Finality of Decision:	<i>Appealable to City Council</i>
For Further Information:	Contact case planner Aubrey Rose, Planner II at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicant, Rico Rivera, on behalf of the property owners, Louis and Marita Rivera, requests Planning Commission approval of 1 Major and 1 Minor Conditional Use Permit each with special findings to allow a full service restaurant including sale of beer and wine to be established on a ‘restricted street’ in the C-31 Special Retail Zone.

Staff recommends approval of the requested permits, subject to Findings for and Conditions of Approval.

PROPERTY DESCRIPTION

The property is a level, commercially-zoned lot located in the Laurel District along the MacArthur Boulevard arterial. The lot measures 30-feet in width by 100-feet in depth (3,000 square-feet in area). It contains a 2-story mixed use building containing 2 residential units over 1 commercial space. The structure was built in the late 1920s or early 1930s and is a C-rated Potential Designated Historic Property under the Cultural Heritage Survey. The building is at zero front and side lot lines and the property has a 5-foot deep rear yard. It is brick with some wood in the façade. The last commercial tenant was a television repair and sales business, “Uncle Al’s TV & VCR” (Consumer Laundry and Repair Service Commercial Activity) which closed in October 2006. Various signs were removed. To the north (left) is a Chinese traditional health center, to the south (right) is a restaurant, to the east (rear) is an apartment building in a residential zone, to the west (opposite, across MacArthur Blvd.) is a martial arts studio.

PROJECT DESCRIPTION

The project is to establish a full-service restaurant within a commercial space. Sale of alcoholic beverages (beer and wine) would be offered. The project would essentially involve tenant improvements (interior alterations) to create a dining room with a bar at the front (bar at right side), a kitchen (middle right), restrooms (center rear) and a prep room (rear). The dining room would have 11 tables with 27 chairs plus bench seats; the bar would have 8 chairs. Dining room capacity would be 41 persons. No business signage is proposed for the façade at this time. Following are proposed hours of operation:

- Monday – closed
- Tuesday through Saturday - 11:00AM to 10:00PM
- Sunday – 8:00AM to 2:00PM

The business would also require a license from the California Department of Alcoholic Beverage Control (ABC).

GENERAL PLAN ANALYSIS

The project site is located in the Neighborhood Commercial Mixed Use area under the General Plan’s Land Use & Transportation Element (LUTE). The Intent of the classification is: *“to identify, create, maintain and enhance mixed use neighborhood commercial centers. These center are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses.”* The Desired Character and Uses are: *“commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.”*

The project site is located in an area with a Strategy Objective of ‘Grow and Change’ under the LUTE (Strategy Diagram Figure # 3 p. 122) and is a Neighborhood Activity Center located on a Key City Corridor (City Structure Diagram). The proposal conforms to the following Policy and Objectives of the LUTE:

Policy I/C3.2 Enhancing Business Districts.

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and used automobile sales and related uses through urban design and business retention efforts.

Neighborhood Activity Centers

Objective N10

Support and create social, informational, cultural, and active economic centers in the neighborhoods.

The project to establish a full-service restaurant (General Food Sales Commercial Activity) within a Neighborhood Commercial area conforms to the LUTE. Staff finds the project to conform to the General Plan.

ZONING ANALYSIS

The project site is located within the C-31 Special Retail Commercial Zone. The intent of the C-31 Zone is: *“to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character.”*

The project requires a Minor Conditional Use Permit with special findings to allow the establishment of a full-service restaurant (General Food Sales Commercial Activity) in the C-31 Special Retail Commercial Zone and a Major Conditional Use Permit with special findings for the restaurant to serve alcoholic beverages since the site is located on a ‘restricted street’ (MacArthur Boulevard). Special findings that must be made to approve the Minor Conditional Use Permit are meant to ensure the retail and pedestrian environment of the district are maintained. Special findings for the Major Conditional Use Permit ensure that the operation would be regulated so as not to pose a proliferation of uses, nuisance to surrounding civic uses or commercial districts, and to apply controls on building design, signage, and litter.

Non-retail use

The C-31 Zone is a Special Retail zone and conditionally permits full-service restaurants (General Food Sales Commercial Activity). The previous use was not a retail use, per se, but was permitted by-right in the C-31 Zone. With regards to potential impacts to the intended retail character of the district, the special use permit findings for the C-31 Zone relate to design and the project does not involve construction of a new building. Given this, no retail would be “displaced” by the project. The previous business is of a type having less commercial demand in recent times and the space has been vacant since 2005. It is also desirable for a retail district to include dining establishments for shoppers. Outdoor seating is desirable for restaurants. The project site is located within the Laurel District and the LUTE lists under Key Lower Hills (Laurel) Implementation Strategies: Corridor Revitalization *“...Existing business districts should be supported...through business retention efforts.”* Lastly, such a restaurant could be converted to retail space in the future if desired. The property abuts a residential property to the rear but the project does not involve a rear dining patio.

Alcoholic beverage sales

Sale of alcoholic beverages are generally permitted by-right in full-service restaurants with the exception of certain ‘restricted streets’ such as MacArthur Boulevard pursuant to OMC Sec. 17.102.210(B)(2). ‘Restricted streets’ were determined to have specific potential impacts regarding sale of alcoholic beverages warranting a Conditional Use Permit with special findings. All Conditional Use Permits involving alcohol are Major and require Planning Commission approval. Consideration of areas over-concentrated with alcoholic beverages establishments does not apply to full-service restaurants such as that which is proposed. Therefore, findings of Public Convenience or Necessity are not necessary to approve the project. Also, City Ordinance no. 75490 (adopted February 1, 2000), a ‘no net increase’ goal in the number of alcohol outlets, does not apply because the liquor license would apply to a full-service restaurant, which is exempted. Maintenance of a Code-conforming full-service restaurant would be a critical, required component of an approval. Nonetheless, staff notes the presence of other alcohol establishments in the area, as well as some record of crime. Therefore, staff analyzed the project as an alcohol establishment in terms of area proliferation and potential for nuisances. These issues are discussed in the KEY ISSUES AND IMPACTS section of this report.

All required findings can be made for the project as proposed. Staff finds the project to be consistent with the Planning Code.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts project involving *operation of existing private structures, facilities*. The proposal to convert a commercial space located in a commercial district into a restaurant that would include beer and wine service meets this description: the project would constitute operation of an existing private facility only. The project is therefore exempt from Environmental Review.

KEY ISSUES AND IMPACTS

The key issues identified with this application are the potential for a proliferation of establishments selling alcoholic beverages and the subsequent possibility of nuisances as a result. The concern is that an over-concentration of establishments such as or similar to bars and liquor stores can lead to nuisances such as littering, disorderly conduct, and other crimes.

The following table indicates liquor establishments within a 1,000-foot radius of the site by address, distance from the project site, and license type. It indicates one on-sale and two off-sale establishments where none of these establishments are similar to that which is proposed (restaurant with beer and wine).

	<u>Address</u>	<u>Distance</u>	<u>ABC license type (description)</u>
1	3500 MacArthur Blvd. (“LaFranchi’s”)	800-feet	21 – off-sale (liquor store)
2	3932 MacArthur Blvd. (“Laurel Lounge”)	500-feet	48 – on-sale (bar)
3	4055 MacArthur Blvd. (“Lucky”)	825-feet	21 – off-sale (supermarket)

The City recently is revoking the land use approval to sell alcoholic beverage at a bar (4001 MacArthur Blvd./deemed-approved location) and a liquor store (4005 MacArthur Blvd./conditionally-permitted) located within 1,000-feet of the project site for histories of associated nuisance activity.

The Oakland Police Department's statistics indicate 56 crimes were reported within 1,000-feet of the subject property in 90 days ending May 12, 2009 (see Exhibit E, attached). None of these crimes was associated with the subject establishment and only one specifically involved alcohol. Furthermore, only 8 crimes were reported within 500-feet of the site in the last 30 days of this period, none involving alcohol.

Staff finds the proposal to be satisfactory due to the nature of the establishment (full-service restaurant) and lack of negative incidences involving similar uses in the area. Additionally, the applicant and proprietor have voluntarily agreed to Conditions of Approval requiring adherence to Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156) and applicable ABC regulations. Should the proprietor desire sale of distilled spirits in addition to beer and wine, a revision to amend the Conditional Use Permit would need to be requested, in addition to proper ABC authorization.

There are no outstanding issues associated with the request. In conclusions, staff recommends approval of the request.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve the Major and Minor Conditional Use Permits subject to the attached findings, special findings, and conditions.

Prepared by:

AUBREY ROSE
Planner II

Approved by:

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

WALTER COHEN
Director
Community & Economic Development Agency

ATTACHMENTS:

- A. [Findings for Approval](#)
- B. [Conditions of Approval](#)
- C. [Plans](#)
- D. [Site/area photographs](#)
- E. [OPD Area Crime Statistics \(Map & Table\)](#)
- F. [Restaurant Menu](#)

Attachment A: Findings for Approval

This proposal meets the required findings under General Use Permit Criteria (OMC Sec. 17.134.050), C-31 Special Retail Commercial Zone Use Permit Criteria (OMC Sec. 17.48.100), and Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.102.210(A)).

SECTION 17.134.050 – GENERAL USE PERMIT CRITERIA:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The project is to establish a restaurant serving beer and wine in a retail commercial district/neighborhood activity center by remodeling a commercial space. The district contains other restaurants with various specialties as well as supermarkets, bars, retailers, services, and is located adjacent to mixed housing type residential neighborhoods. The existing and proposed use is compatible with the surrounding district in terms of activity and site function. The project is not expected to generate any nuisances or an appreciable increase to automobile traffic. The applicant and proprietor have agreed to Conditions of Approval requiring adherence to Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156), which should address all concerns and ensure this business to not have a negative impact on the surrounding neighborhood.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The location and site are appropriate for a restaurant with beer and wine service as proposed. The restaurant will contain a dining room and is not directly adjacent to sensitive uses such as schools, churches, or residential care homes.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The Laurel District, a C-31 Special Retail Commercial Zone, is a vibrant neighborhood-serving commercial district with an array of retail and dining establishments that also attracts patrons from outside of the Laurel neighborhood.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

Exterior changes are not proposed and the project is therefore not subject to Design Review.

Conditions of Approval

E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The project site is located in the Neighborhood Commercial Mixed Use area under the General Plan's Land Use & Transportation Element (LUTE). The Intent of the classification is: *"to identify, create, maintain and enhance mixed use neighborhood commercial centers. These center are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses."* The Desired Character and Uses are: *"commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial."*

The proposal conforms to the following Policy and Objectives of the LUTE:

Policy I/C3.2 Enhancing Business Districts.

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and used automobile sales and related uses through urban design and business retention efforts.

Neighborhood Activity Centers

Objective N10

Support and create social, informational, cultural, and active economic centers in the neighborhoods.

The project to establish a Mexican cuisine restaurant located in a neighborhood commercial area conforms to the LUTE. Staff finds the project to conform to the General Plan.

SECTION 17.48.100 – C-31 SPECIAL RETAIL COMMERCIAL ZONE USE PERMIT CRITERIA

A. That the proposal will not detract from the character desired for the area;

The proposal does not involve exterior changes to a Potential Designated Historic Property and to establish a restaurant in a formerly non-retail space will not detract from the desired character of the Laurel District.

B. That the proposal will not impair a generally continuous wall of building facades;

The project does not involve new construction or additions to a building.

C. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;

The proposal does not involve replacement or loss of a retail establishment or removal of a commercial façade.

D. That the proposal will not interfere with the movement of people along an important pedestrian street;

The proposal does not involve changes to the City sidewalk that would hinder pedestrian circulation.

- F. That no driveway shall connect directly with the area’s principal commercial street unless:**
- 1. Vehicular access cannot reasonably be provided from a different street or other way, and**
 - 2. Every reasonable effort has been made to share means of vehicular access with abutting properties;**

The property does not contain a driveway and the proposal does not include the creation of a driveway at the property.

- F. That the amount of off-street parking, if any, provided in excess of the requirements of this code will not contribute significantly to an increased orientation of the area to automobile movement;**

The site does not contain off-street parking.

- G. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council.**

The project site is located in an area with a Strategy Objective of ‘Grow and Change’ under the LUTE (Strategy Diagram Figure # 3 p. 122) and is a Neighborhood Activity Center located on a Key City Corridor (City Structure Diagram). To convert a non-retail commercial space into a restaurant is an appropriate land use project.

SECTION 17.102.210(A) – USE PERMIT CRITERIA FOR ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES:

- 1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area’s function and character, problems of crime and loitering, and traffic problems and capacity;**

The liquor establishments in the district are not undesirable or a source of area crime or congestion; the establishment of a restaurant serving beer and wine that is located in a retail district containing several other restaurants and appropriate liquor establishments will not constitute a proliferation of undesirable uses. Conditions of Approval include adherence to Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

- 2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;**

The restaurant is not adjacent to any civic uses such as schools or parks and is not expected to negatively impact churches or health centers located on MacArthur Boulevard.

- 3. That the proposal will not interfere with the movement of people along an important pedestrian street;**

The project will not block the sidewalk in any way.

- 4. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;**

The project does not involve exterior changes and the building contains an attractive facade.

- 5. That the design will avoid unduly large or obtrusive Signs, bleak unlandscaped parking areas, and an overall garish impression;**

The project does not involve new signage; should the Applicant desire new signage, they will be subject to Design Review.

- 6. That adequate litter receptacles will be provided where appropriate;**

The restaurant will feature table service; staff will manage waste on-site both indoors and on a private patio; take-out orders will not be consumed in public and litter will therefore not result.

- 7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten p.m. and seven a.m. The same criteria shall apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full-service restaurants.**

The business does not face residences and will close no later than 10:00PM.

- 8. That proposals for new Fast-Food Restaurants must substantially comply with the provisions of the Oakland City Planning Commission "Fast-Food Restaurant--Guidelines for Development and Evaluation" (OCPD 100-18).**

This finding is not applicable; the proposal does not involve a Fast Food Restaurant.

Attachment B: Conditions of Approval

1. Approved Use

Ongoing

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans dated **September 26, 2008** and submitted on **April 16, 2009** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- b) This action by the **City Planning Commission** (“this Approval”) includes the approvals set forth below. This Approval includes:
 - i) *1 Major and 1 Minor Conditional Use Permit each with special findings to allow the establishment of a full-service restaurant (General Food Sales Commercial Activity) to include sale of alcoholic beverages in a commercial building located on a ‘restricted street’ in the C-31 Special Retail Commercial Zone.*

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Building Services Division, the City’s Fire Marshal, and the City’s Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. Underground Utilities

Prior to issuance of a building permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

13. Payment for Public Improvements

Prior to issuance of a final inspection of the building permit.

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

14. Construction Management Plan

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division for review and approval a construction management plan that identifies the conditions of approval related

to construction impacts of the project and explains how the project applicant will comply with these construction-related conditions of approval.

15. Dust Control

Prior to issuance of a demolition, grading or building permit

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

- a) Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- e) Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
- f) Limit the amount of the disturbed area at any one time, where feasible.
- g) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- h) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- i) Replant vegetation in disturbed areas as quickly as feasible.
- j) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- k) Limit traffic speeds on unpaved roads to 15 miles per hour.
- l) Clean off the tires or tracks of all trucks and equipment leaving any unpaved construction areas.

16. Construction Emissions

Prior to issuance of a demolition, grading or building permit

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- a) Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1 provides the issuance of authorities to construct and permits to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- b) Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) shall be performed for such equipment used continuously during the construction period.

17. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

18. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the

tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

19. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and
- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

20. Interior Noise

Prior to issuance of a building permit and Certificate of Occupancy

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:

- (a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and
- (b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.

- (c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity. Potential features/measures to reduce interior noise could include, but are not limited to, the following:
- a) Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.
- b) Prohibition of Z-duct construction.

21. Operational Noise-General

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

22. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.

23. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and

chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.

- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

24. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be in implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

25. Lighting Plan

Prior to the issuance of an electrical or building permit

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.

26. Asbestos Removal in Structures

Prior to issuance of a demolition permit

If asbestos-containing materials (ACM) are found to be present in building materials to be removed, demolition and disposal, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all

applicable laws and regulations, including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended.

SPECIFIC CONDITIONS

27. Full-Service Restaurant

Ongoing

The establishment must operate as a full-service restaurant to sell alcohol. To that end, the following requirements must be adhered to:

- a. The monthly gross sales of alcoholic beverages shall not exceed 40-percent of gross sales during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
- b. The premises shall be maintained as a bona fide eating place and shall provide a menu containing an assortment of foods normally offered in such restaurants.
- c. The premises shall be equipped and maintained in good faith and shall possess, in operative condition, such convenience for cooking foods such as a stove, ovens, broilers, or other devices as well as pots, pans or containers which can be used for cooking or heating foods on the type heating device employed.
- d. The premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.
- e. The licensee shall comply with the provisions of Section 23038 B&P, and acknowledge the incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned code section.

28. Alcohol Sale

Ongoing

a. Location and manner of alcohol consumption

Alcohol sale is on-sale, for on-site consumption only, and is intended to be served with meals.

b. Types of Alcohol Permitted

Beer and wine only may be sold. Should the proprietor desire sale of distilled spirits, an application for a revision to amend this approval must be submitted to and approved by the Planning & Zoning Division.

c. Additional Permits Required

Necessary ABC permits must be obtained prior to commencement of activity.

d. Hours of Alcohol Sale

Hours of alcohol sales are limited to no later than 9:45PM.

e. Nuisances

Crime, litter, or disorderliness conduct associated with alcohol sales at the establishment will result in a revocation of the Major Conditional Use Permit or a review to revoke.

29. Inclusion of conditions in State Department of Alcoholic Beverage Control license.

Conditions of Approval

a. Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

30. Conformance with State Department of Alcoholic Beverage Control regulations

Ongoing

This use shall conform to all provisions of the State ABC license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

31. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial

Activities

Ongoing

a. Signage

Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to bar. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b. Graffiti

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

c. Pay Phones

No pay phones are permitted outside the building.

d. Loitering

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiters who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

e. Securing Site

Applicant shall conform to Ordinance 12390 related to securing sites after hours to discourage loitering and crime in parking lots.

f. Deemed Approved Alcoholic Beverage Sale Regulations

The applicant and proprietor voluntarily agree to conform to the Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

32. Trash and litter

Ongoing

The licensees/property owners shall clear the gutter and sidewalks along MacArthur Boulevard plus twenty feet beyond the property lines along this street of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

33. Signage

Prior to constructing signage

The design for signage must be approved by the Planning & Zoning Division.

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)