

Location:	1834 Park Boulevard
Assessor's Parcel Number:	021-0230-015-00
Proposal:	To allow a Group Assembly Commercial activity for a theater with an accessory cannabis dispensary use and on-site consumption within the existing historic Parkway Theater.
Contact Person/Phone Number:	Tyler Kobick of Design Draw Build (510) 833-2643
Owner:	Ming Wa, LLC
Planning Permits Required:	Minor Conditional Use Permit for Group Assembly Commercial Activity and a theater
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-3 Neighborhood Commercial - 3 Zone
Environmental Determination:	Exempt per CEQA Sections 1530 I: Existing Facilities; 1533 I: Historical Resource Restoration-Rehabilitation; and 15183 - Projects Consistent with a Community Plan, General Plan or Zoning.
Historic Status:	The existing building is on the Local Register with a current rating of 82+ by the Oakland Cultural Heritage Survey (OCHS).
City Council District:	2
Date Filed:	November 17, 2020
Staff Recommendation:	Approve with the attached conditions
Finality of Decision:	Appealable to City Council within 10 days
For Further Information:	Contact case planner Michele T. Morris at (510) 238-2235 or mmorris2@oaklandca.gov

SUMMARY.

The project applicant has submitted a request to operate a theater with an existing accessory cannabis dispensary use and on-site consumption within the existing historic Parkway Theater building located on the site. The project would require a Minor Conditional Use Permit (CUP) to allow for the theater, Group Assembly Commercial Activity. No other permits are required.

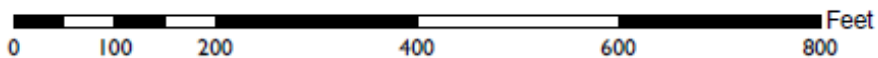
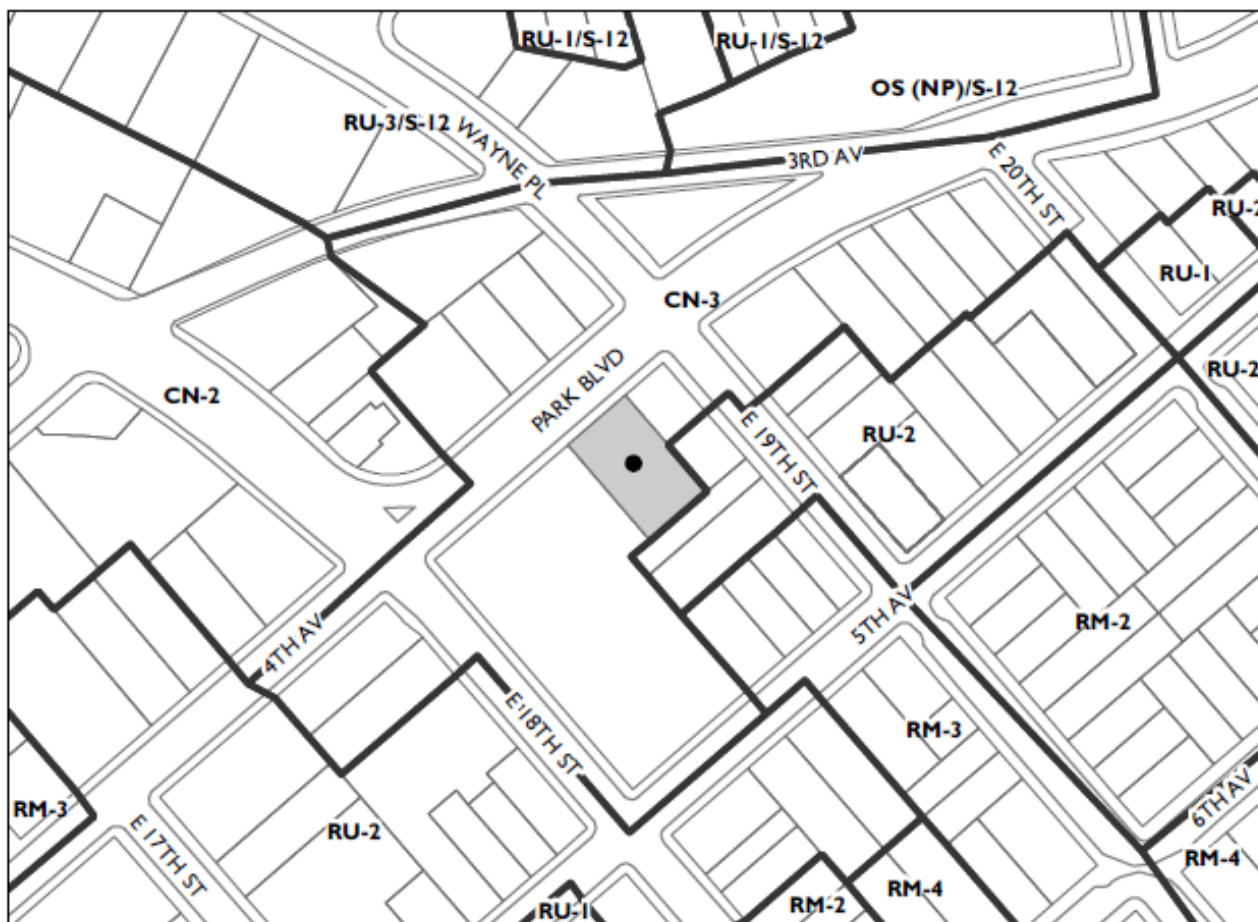
Due to the associated cannabis use within the proposed theater and public comment, the Zoning Manager has decided to refer this application to the City Planning Commission for decision rather than acting on it himself pursuant to Section 17.134.0408(I). In this case, the application shall still be considered a minor permit but shall be processed (decision and appeal procedure) as if it was a Major CUP.

As detailed below, staff finds that the project meets all the required Findings. Therefore, staff recommends approval of the project subject to the attached Conditions of Approval.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

The project is located at 1834 Park Boulevard, an interior parcel near the intersection of Park Boulevard and E. 19th Street. The subject lot is 9,375 sq. ft. in size and is surrounded by one- to two-story commercial buildings. The site contains an existing, three-story commercial theater building with two theater spaces which is on the City's Local Register of Historic Resources and has a current rating of 82+ by the Oakland Cultural Heritage Survey.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN20161
Applicant: Tyler Kobick, Design Draw Build
Address: 1834 Park Boulevard
Zone: CN-3

BACKGROUND

On April 2, 2019, Tidewater Patients Group was granted approval by the City Administrator to operate a retail space for cannabis at the front of the building.

The front facade of the theater received an approved Small Project Design Review (OS 190209) permit for repair and rehabilitation. The City also issued a Building Permit (B 1903651) for interior modifications of the existing retail space and the facade improvements on the ground level.

The applicant submitted a previous application for a Minor CUP to operate a theater at this location in February of 2019. However, that application was withdrawn in July of 2019 so that the applicant could focus on the improvements to the facade and dispensary.

PROJECT DESCRIPTION

The proposed project is to allow operation of a theater within the existing historic Parkway Theater. The theater would operate from 7:00 AM to 10:00 PM Monday-Sunday. The project would include interior modifications of the two theater spaces to combine the theater spaces into one area. Specifically, the interior improvements to the first floor of the theater would include new booth seating arrangements and repair of interior decorations. The concession stand at the first floor would be repaired and new accessible bathrooms will be constructed. In addition, the kitchen will be renovated for popcorn, other food items and cannabis dispensary. At the existing second floor, no changes are proposed including to the office fronting the street. At the mezzanine level (third floor), new seating is proposed; however, the project screen will be partially removed at this level. The interior stairs leading to the second-floor mezzanine would be repaired.

The project is proposing to have 20-40 persons involved in the operations on-site and an occupancy of approximately 200 people. In addition, the project will include three security guards.

The theater would operate in conjunction with an accessory cannabis dispensary and would allow for on-site cannabis consumption; therefore, the theater is expected to be limited to persons 21 and older.

GENERAL PLAN ANALYSIS

The proposed project site is classified as Neighborhood Center Mixed Use per the General Plan's Land Use and Transportation Element (LUTE). The intent of this land use classification is "to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers 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 project conforms to LUTE objectives and policies, as summarized below:

Objective J/C3

Ensure that Oakland is adequately served by a wide variety of commercial uses, appropriately sited to provide for competitive retail merchandising and diversified office uses, as well as personal and professional services.

Policy I/C3.4 Strengthening Vitality

The vitality of existing neighborhood missed use and community commercial areas should be strengthened and preserved.

Policy IIC3.5 Promoting Culture, Recreation, and Entertainment

Cultural, recreational and entertainment uses should be promoted within the Downtown, particularly in the vicinity of the Fox and Paramount Theaters, and within the Jack London Square area.

Objective N9

Promote a strong sense of community within the city of Oakland, and support and enhance the district character of different areas of the city, while promoting linkages between them.

Policy N9.8 Preserving History and Community

Locations that create a sense of history and community within the City should be identified and preserved where feasible.

Policy N9.9 Respecting Architectural Integrity

The City encourages rehabilitation efforts which respects the architectural integrity of a building's original style.

ZONING ANALYSIS

Cannabis Use and Permit

As noted above in the *Background* section of the report, the site contains a permitted retail sales area at the front of the building for cannabis. Neither the Cannabis use/consumption within the theater, nor the proposed accessory dispensary, is regulated by the Planning Code but is processed under Title 5 of the Oakland Municipal Code. Per the City Administrator, the existing cannabis permit will not need to be altered with the proposed project and future on-site cannabis consumption. Furthermore, sale of cannabis is considered a General Retail Sales Activity which is permitted in the CN-3 Zone.

Interior Changes

As noted above in the *Background* section of the report, a Small Project Design Review permit for changes to the facade was approved and this work is currently under construction. Since only interior changes are proposed with the current project, a Regular Design Review permit is not required.

Minor Conditional Use Permit

The project site is located within the CN-3 Neighborhood Commercial - 3 Zone which is intended to create, improve, and enhance areas neighborhood commercial centers that have a compact, vibrant pedestrian environment." In the CN-3 Zone, a theater, or Group Assembly Activity, requires a Minor CUP pursuant to Planning Code Section 17.33.030. While, the previous use was a theater, it has not operated for more than two years. As such, a new CUP is required to re-establish the building's theater use, per Planning Code Section 17.134.130.

Due to the associated on-site cannabis consumption within the theater, the Zoning Manager has decided to refer the application to the City Planning Commission for decision rather than acting on it himself pursuant to Section 17.134.0408(1). In this case, the application shall still be considered a minor permit, but shall be processed (decision and appeal procedure) as if it is was a Major CUP.

The required Findings for the Minor CUP are attached and included in staffs evaluation as part of this report.

Other Zoning Permits

No other Zoning permits are required. The subject property is a nonconforming facility as there is no off-street parking on the subject property. However, per Planning Code Section 17.11.6.120, no new parking is required as the land use activity is not changing from its previous permitted and long-standing use.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts the project under Section 15301 where interior alterations are made to an existing structure and Section 15331 where the historical resource restoration-rehabilitation of the interior of the building is proposed. Staff finds that none of the exceptions to the exemptions to the CEQA Guidelines are triggered by the proposal. Specifically, the project is not located in a sensitive environment. The site is a flat lot that already contains the existing building. No critical habitat exists on the site. There are no cumulative impacts or unusual circumstances with this change of activity. The proposed project site is not located along a scenic highway or on a hazardous waste site. Finally, the existing building is historic but is being rehabilitated. Furthermore, Section 15183 (projects consistent with the General Plan or Zoning, as demonstrated above) also applies.

KEY ISSUES AND IMPACTS

On April 2, 2019, the City Administrator approved a cannabis dispensary permit for Tidewater Patients Group to operate a dispensary at the subject site. The dispensary application was subject to a public hearing with public notice of the hearing in accordance with Section 5.02.050 of the Oakland Municipal Code. Comments were received and considered when granting the permit. The City Administrator attached Conditions of Approval to that permit specifically related to the sale and consumption of cannabis.

Before withdrawal of the original CUP application as noted in the *Background* section of the report, Planning staff received many comments and inquiries from the public about the theater use in conjunction with the site's cannabis permit. Again, cannabis permits and uses are not regulated under the Planning Code. As such, the use of cannabis in the theater is not under the purview of the Planning Commission. One of the purposes of having a public hearing on the project is for the Planning Commission to hear possible concerns related to the cannabis use in the large theater as it pertains to land use permits and pass any comments on to the City Council and City Administrator as they consider any future revisions to the cannabis permit process. For example, Planning staff believes that the project should have been considered as a theater or cannabis lounge first, not after, the cannabis permit was approved.

CONCLUSION

The proposed project would allow the theater use to be re-established in the existing historic theater. The

cannabis use is not regulated under the Planning Code and has already received approval from the City Administrator. The project meets the required Findings for approval of the theater. Therefore, staff recommends approval of the project subject to the attached Conditions.

- RECOMMENDATIONS:**
- I. Affirm staff's environmental determination.
 2. Approve the Minor Conditional Use Permit subject to the *Findings* and *Conditions* attached to this report.

Prepared by:

Michele T. Morris
Planner III

Reviewed by:



Robert D. Merkamp
Zoning Manager

Approved for forwarding to the
City of Oakland Planning Commission:



Edward Manasse, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Findings for Approval
- B. Conditions of Approval
- C. Project Plans dated Nov. 17, 2020

ATTACHMENT A: FINDINGS FOR APPROVAL

This proposal meets all the required findings under the General Use Permit Criteria (OMC Sec. 17.134.050) of the Oakland Planning Code (Title 17) as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are in nonbold type.

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 location and operating characteristics of the project as a theater will be compatible with and will not adversely affect the livability or appropriate development of abutting properties. The site was originally developed as a theater and continued to operate off and on as a theater until recently. The re-establishment of the theater will not affect the livability or development of surrounding properties or result in the generation of traffic greater than the earlier theater use at the site. The proposed project will not result in any exterior construction which would increase in building height, scale, bulk, and lot coverage of the area. and is compatible with the existing neighborhood development pattern.

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 proposal is not for construction and so the location, design, and site planning will not be affected. The proposed project results in functional retail, cultural and entertainment-friendly environment. The facade improvements have already been approved under the Small Project Design Review permit.

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 proposal will enhance the successful operation of the surrounding commercial and residential area by providing a cultural venue and commercial opportunities for Oakland residents.

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

No exterior modifications are proposed, and design review is, therefore, not required; should any exterior modifications including commercial signage other than what was already approved under the Small Project Design Review permit be desired in the future, such project will require review and approval by the Bureau of Planning.

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 proposed project site is classified Neighborhood Center Mixed Use per the General Plan's Land Use and Transportation Element (LUTE). This designation is "to identify, create, maintain and enhance mixed use neighborhood commercial centers." The project involves the establishment of a Group Assembly Commercial Activity with the new operation of a theater and interior improvements to the building, which is consistent with the intent and desired character and uses of the General Plan as well as the following Objectives and Policies as listed in the staff report above.

ADDITIONAL CONDITIONAL USE PERMIT FINDINGS

1. The proposal will not detract from the character desired for the area:

The site has been used as a theater since it was constructed around 1920. The re-establishment of the proposed theater use at this location will contribute to the character desired for the area by creating a dynamic commercial and cultural environment, maintaining an active storefront, and creating opportunities for community interaction.

2. The proposal will not impair a generally continuous wall of building facades:

The property contains an existing building with existing storefronts. No exterior physical changes to the property are proposed with this application.

3. 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 site has been used as a theater since it was constructed around 1920, and no changes are proposed. The building contains an existing storefront which will be retained for general retail uses in order to engage with the community and maintain an active street edge. The theater proposal will draw people to the area and the shopping and commercial businesses next door and across the street.

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

No physical changes to the property are proposed with this application. The proposal maintains the existing active street-front spaces. The theater proposal will draw people to the area and will not interfere with the movement of people.

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

No district plan has been approved for the area. As noted throughout the report and Findings, the proposal for theater conforms to the intent and desired character of the Neighborhood Center Mixed Use land use classification.

ATTACHMENT B: CONDITIONS OF APPROVAL

The proposal is hereby approved subject to the following Conditions of Approval:

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans **November 17, 2020**, as amended by the following conditions of approval and mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten (10) calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit application has been filed with the Bureau of Building and diligently pursued towards completion, 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 Approval, 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 or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, Department of Transportation, and Public Works Department. 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 #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a** The project applicant and property owner, including successors, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b** The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c** Violation of any term, Condition, or project description relating to the Approval 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 Approval 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 Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within sixty (60) days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a** To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (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 this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project 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 project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to

the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

The Approval 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. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with Engineering Services and/or the Bureau of Building, if directed by the Director of Public Works, Building Official, Director of City Planning, Director of Transportation, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, Engineering Services, Department of Transportation, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. Trash and Blight Removal

Requirement: The project applicant and his/her successors shall maintain the property free of blight, as defined in chapter 8.24 of the Oakland Municipal Code. For non-residential and multi-family residential projects, the project applicant shall install and maintain trash receptacles near public entryways as needed to provide sufficient capacity for building users.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Graffiti Control

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the

impacts of graffiti. Such best management practices may include, without limitation:

- i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:
- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
 - ii. Covering with new paint to match the color of the surrounding surface.
 - iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Dust Controls- Construction Related

Requirement: The project applicant shall implement all of the following applicable dust control measures during construction of the project:

- a. Water all exposed surfaces of 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 feasible.
- 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. 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. Limit vehicle speeds on unpaved roads to 15 miles per hour.
- e. All demolition activities (if any) shall be suspended when average wind speeds exceed 20 mph.
- f. All trucks and equipment, including tires, shall be washed off prior to leaving the site.
- g. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Criteria Air Pollutant Controls - Construction Related

Requirement: The project applicant shall implement all of the following applicable basic control measures for criteria air pollutants during construction of the project as applicable:

- a. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.
- b. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations").
- c. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Equipment check documentation should be kept at the construction site and be available for review by the City and the Bay Area Air Quality District as needed.
- d. Portable equipment shall be powered by grid electricity if available. If electricity is not available, propane or natural gas generators shall be used if feasible. Diesel engines shall only be used if grid electricity is not available and propane or natural gas generators cannot meet the electrical demand.
- e. Low VOC (i.e., ROG) coatings shall be used that comply with BAAQMD Regulation 8, Rule 3: Architectural Coatings.
- f. All equipment to be used on the construction site shall comply with the requirements of Title 13, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") and upon request by the City (and the Air District if specifically requested), the project applicant shall provide written documentation that fleet requirements have been met.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

16. Archaeological and Paleontological Resources - Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(t), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate

measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.

In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.

In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Human Remains - Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event 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 California Health and Safety Code. 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 and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction-Related Permit(s)

Requirement: The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

19. Hazardous Materials Related to Construction

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following:

- a. Follow manufacture's recommendations for 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. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and
- 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 project 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 notifying the City and applicable 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.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Construction Days/Hours

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling 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.

- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

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.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

21. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- 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. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties 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.

- e. 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.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

22. Extreme Construction Noise

a. Construction Noise Management Plan Required

Requirement: Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. Public Notification Required

Requirement: The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.

When Required: During construction

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

23. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 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 City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

24. Construction Activity in the Public Right-of-Way

a. Obstruction Permit Required

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets, sidewalks, bicycle facilities, and bus stops.

When Required: Prior to approval of construction-related permit

Initial Approval: Department of Transportation

Monitoring/Inspection: Department of Transportation

b. Traffic Control Plan Required

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, bus stops, or sidewalks, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian accommodations (or detours, if accommodations are not feasible), including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The Traffic Control Plan shall be in conformance with the City's Supplemental Design Guidance for Accommodating Pedestrians, Bicyclists, and Bus Facilities in Construction Zones. The project applicant shall implement the approved Plan during construction.

Initial Approval: Department of Transportation

Monitoring/Inspection: Department of Transportation

c. Repair of City Streets

Requirement: The project applicant shall repair any damage to the public right-of-way, including streets and sidewalks, caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Department of Transportation

25. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

26. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

27. Green Building Requirements - Small Projects

a. Compliance with Green Building Requirements During Plan-Check

The project applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the City of Oakland Green Building Ordinance (chapter 18.02 of the Oakland Municipal Code) for projects using the **StopWaste.Org Small Commercial Checklist**.

1. The following information shall be submitted to the City for review and approval with application for a building permit:
 - Documentation showing compliance with Title 24 of the current version of the California Building Energy Efficiency Standards.
 - Completed copy of the green building checklist approved during the review of a Planning and Zoning permit.

- Permit plans that show in general notes, detailed design drawings and specifications as necessary compliance with the items listed in subsection (b) below.
 - Other documentation to prove compliance.
- ii. The set of plans in subsection (a) shall demonstrate compliance with the following:
- CALGreen mandatory measures.
 - All applicable green building measures identified on the checklist approved during the review of a Planning and Zoning permit, or submittal of a Request for Revision Plan-check application that shows the previously approved points that will be eliminated or substituted.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. Compliance with Green Building Requirements During Construction

Requirement: The project applicant shall comply with the applicable requirements of CALGreen and the Green Building Ordinance during construction.

- i. The following information shall be submitted to the City for review and approval:
- Completed copy of the green building checklists approved during review of the Planning and Zoning permit and during the review of the Building permit.
 - Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

28. Employee Rights

Requirement: The project applicant and business owners in the project shall comply with all state and federal laws regarding employees' right to organize and bargain collectively with employers and shall comply with the City of Oakland Minimum Wage Ordinance (chapter 5.92 of the Oakland Municipal Code).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A