

Case File Number PLN22090**December 7, 2022**

Location:	2550 Telegraph Ave; APN 009-068302401 (See map on the reverse)
Proposal	To establish a non-profit comedy club with a type 64 alcohol license in an existing 3,800 square-foot, ground floor commercial space. Type 64 licenses allow on-site sales of alcohol by non-profit theatre companies.
Applicant:	Colleen Breen
Phone Number:	773-791-0300
Owner:	471 26th Street Apartments Investors LLC
Case File Number:	PLN22090
Planning Permits Required	Major Conditional Use Permit (CUP) for Alcohol Sales Commercial Activity and Minor CUP for Group Assembly Commercial Activity
General Plan	Community Commercial
Zoning	Community Commercial – 2 (CC-2)
Environmental Determination	Exempt per CEQA Guidelines Sections 15301: Existing Facilities and Section 15183: Projects consistent with Community Plan, General Plan or Zoning
Historic Status:	The site is a noncontributor to an Area of Secondary Importance (Upper Telegraph Avenue)
City Council District:	3
Status:	Pending
Actions to be Taken:	Receive public comments and Planning Commission comments. Planning Commission action based on staff report.
Staff Recommendation:	Approval subject to the attached Conditions
Finality of Decision:	Appealable to the City Council within 10 days.
For Further Information:	Contact project planner Kubilay Aaron İnanlı at (510) 238-2074 or kinanli@oaklandca.gov

SUMMARY

The applicant has requested a Major Conditional Use Permit for Alcohol Sales Commercial Activity and a Minor Conditional Use Permit for a Group Assembly Commercial Activity for their non-profit theater (All Out Comedy Theater) on the ground floor of the new Telegraph Arts Building on Telegraph Avenue at 26th Street. The proposal would require a Type 64 liquor license from the State Department of Alcoholic Beverage Control (ABC), which would allow all types of alcoholic beverages, but only to ticketholders two hours prior, during, and one hour after a “bona fide” theatre performance. The project requires additional findings for Alcoholic Beverage Sales Commercial Activity as well as Findings of Public Convenience or Necessity (PCN).

The proposal will establish a new small business; provide services and entertainment in the KONO business District and the First Friday celebration area; and provide evening and weekend activity at a critical commercial corridor. Based on the Findings and Conditions of Approval, the business is not anticipated to lead to nuisances, despite its location within an area of overconcentration related to crime and ABC licenses (see the *Key Issues and Impacts* section of this report for a detailed discussion of overconcentration).

PROPERTY DESCRIPTION

The property is a flat corner lot in the KONO neighborhood, with a principal frontage on Telegraph Avenue and secondary frontage on 26th Street. The site contains a new six-story apartment building with ground-floor commercial space. The building is in the Upper Telegraph Avenue Historic Area of Secondary Importance (ASI) and built to the property line with large transparent storefront windows adjacent to three commercial spaces on the ground floor. The surrounding uses include stores, restaurants, bars, and offices and is a center of activity during the monthly First Friday celebration. The City of Oakland considers this and the adjacent Uptown neighborhood centers for nighttime activity, and include food, entertainment, and art venues.

PROJECT DESCRIPTION

The proposal is to relocate a nonprofit (All Out Comedy Theater) specializing in improvisation classes and comic performing arts into one of the new commercial spaces in the building. The proposal requires the proprietor to obtain a Type 64 ABC Liquor License, which allows nonprofit theater companies to sell and serve alcoholic beverages to ticketholders during, two hours prior to, and one hour after, a “bona fide theater performance”.

The business would employ 7-12 workers including teachers for educational workshops and two security guards to watch the door during weekend shows. Staff members at the door would help address noise and nuisance concerns.

The floor plan includes a venue space to seat an anticipated 40-60 ticketed audience members for weekend shows. Patrons would pass through a lounge with seated areas before entering the theatre venue. This lounge would prevent excessive noise exiting the theatre onto the street. In addition, applicant is installing soundproofing to prevent excessive noise during shows. The proposal also includes two classroom spaces behind large windows that front 26th Street.

No exterior changes are proposed, and no on-site parking would be devoted to the business.

The proposed hours of operation are as follows:

- Monday through Thursday: 6:00 pm to 10:00 pm
- Friday and Saturday: 6:00 pm to 12:00 am
- Sunday: 2:00 pm to 10:00 pm

The applicant’s anticipated menu for the proposal would include soft drinks, assorted snacks, a selection of canned beer, and glasses of wine.

The applicant is in the process of applying for the ABC license and has voluntarily agreed to all ABC and City regulations regarding this activity.

The applicant has conducted community outreach by contacting neighborhood groups. Letters of support have been received as noted in the *Key Issues and Impacts* section of this report. In addition, the applicant is scheduled to present at the November 28th meeting of Police Beat 9x N

GENERAL PLAN ANALYSIS

The proposed project site is classified as Community Commercial per the General Plan’s Land Use and Transportation Element (LUTE). The intent of this classification is “to create, maintain and enhance areas

suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping". This project conforms to the following LUTE objectives and policies:

Objective I/C3

Expand and retain Oakland's job base and economic strength.

Policy I/C8 Providing Support Amenities near Employment Centers

Adequate cultural, social, and support amenities designed to serve Oakland should be provided within close proximity of employment centers.

Objective I/C3

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

Policy D5.1 Encouraging Twenty-Four Hour Activity

Activities and amenities that encourage pedestrian traffic during the work week as well as evenings and weekends should be promoted.

ZONING ANALYSIS

The site is located within the Community Commercial – 2 (CC-2) Zone. According to the Planning Code, "the CC-2 Zone is intended to create, maintain, and enhance areas with a wide range of commercial businesses with direct frontage and access along the City's corridors and commercial areas."

Conditional Use Permits and Additional Findings

Pursuant to Sections 17.58.40 and 17.134.020(A)(2) of the Planning Code, a Major Conditional Use Permit (CUP) is required for Alcoholic Beverage Sales such as the proposed bar and lounge. Major CUPs require a decision by the Planning Commission.

Additional findings specific to Alcoholic Beverage Sales Activities ensure a thorough review of the proposal. The Planning Code requires a review of these activities to ensure they do not contribute to nuisances in the community, particularly those related to alcohol use. While the City's "No Net Increase Goal" (City Council Resolution 75490 C.M.S., adopted 2000) discourages new licenses in an attempt to cap the quantity of alcohol sales in the City, this resolution permits new on-sale retail alcoholic beverage sales licenses when the business is located Downtown. The required Major CUP and additional findings are in the *Findings* section of this report.

As they are planning to host shows on the weekend, the applicant is also seeking a Minor CUP for Group Assembly Commercial Activity. Minor CUPs are not subject to additional findings.

Findings of Public Convenience or Necessity

The site is located in police Beat 8X. This area is roughly bound by Grand Avenue to the south, 40th Street to the north, Orange Street to the east, and the I-980 freeway to the west. According to Oakland Police Department data, this Beat is over-concentrated for rates of reported crime in comparison to Citywide rates.

The site is also in Census Tract 4013 which is roughly bound by Grande Avenue to the south, I-580 to the North, I-980 to the west, and Broadway to the East. According to ABC data, this tract is over-concentrated for the quantity of ABC licenses in comparison to tracts Countywide. This Census Tract contains the following ABC licenses: one #40 (bar with beer), nine #41's (restaurant with beer and wine), one #42 (bar

with beer and wine), twelve #47's (restaurant with liquor, beer, and wine), four #48's (bar with liquor, beer, and wine), four #58's (caterer), two #68's (portable bar) and one #77 (event). (*Attachment D*).

In an over-concentrated area, Findings of Public Convenience or Necessity are required to be met for Alcoholic Beverage Sales to be established. A more detailed discussion of the overconcentration issues is in the *Key Issues and Impacts* section of this report.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 exempts projects involving operation and licensing of existing private facilities and certain projects within existing structures. The proposal for on-site alcoholic beverage sales from a new bar in an existing building with no exterior changes would constitute operation of an existing private facility. Finally, on another separate and independent basis, that CEQA Guidelines Section 15183.3 (Projects consist with a Community Plan, General Plan or Zoning) is also applicable as noted in the *General Plan* and *Zoning* sections above.

KEY ISSUES AND IMPACTS

As conditioned, staff believes the proposal is appropriate for the location despite the over-concentration of ABC Licenses in the area. The City encourages ABC licenses in this area to promote a focus on entertainment businesses, particularly during First Fridays. A non-profit theater will contribute to this node of activity and is unlikely to create nuisances by serving beer and wine for theater performances. The 40-60-person attendance is relatively modest and will not overwhelm the neighborhood after performances. Conditions related to litter removal, noise, security guards and cameras, graffiti removal, loitering, and ABC requirements will further limit nuisances at the site.

Further, crime rates are a function of areas within the beat as a whole and may not clustered around the project site. Staff research indicates that crimes within a 500-foot radius over the previous four weeks are dispersed from the site (see *Attachment E*). According to the Planning Code, the 1,000-foot distance separation between ABC licenses and the City Council's general goal of capping the number of non-restaurant ABC licenses in Oakland does not apply to the Central Business District. The addition of late-night premises has brought more people to the area, which generally disincentivizes violent crime during evenings.

The appropriateness of the activity for the area is reflected in the letters of support from the KONO Business District Association and the Ujima Friends Neighborhood Crime Prevention Council (see *Attachment F*).

RECOMMENDATIONS:

Due to the proposal's ability to meet required findings, staff recommends approval of the project, subject to Conditions of Approval, including a compliance review

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

Prepared by:

Kubilay Aaron Inanli

Kubilay Aaron Inanli
Planner I

Reviewed by:



Robert D. Merkamp

Bureau of Planning

Approved for forwarding to the
City Planning Commission:



Ed Manasse, Deputy Director

Bureau of Planning

LEGAL NOTICE: The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced (Code of Civil Procedure Section 1094.6).

ATTACHMENTS:

- A. Findings
- B. Conditions
- C. Project Plans / Photographs
- D. ABC Licensing Data
- E. Area Crime Statistics (Map & Table)
- F. Letters of support

ATTACHMENT A: FINDINGS FOR APPROVAL

This proposal meets the required findings under **General Conditional Use Permit Criteria (OMC Sec. 17.134.050); Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030.A); and Findings for Public Convenience or Necessity (OMC Sec. 17.103.030.B.3)** as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can be made are in normal type.

General Conditional Use Permit Criteria (OMC Sec. 17.134.050)

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 proposal for a comedy club/workshop in an existing building is compatible with the site and the Downtown entertainment district. The business will enhance the diversity of beverage options in the area and later hours will add to evening activity along the corridor. The site sits below living units; however, hours will be limited to 10pm on weekdays and midnight on weekends. As conditioned, part of the project includes soundproofing the theater where performances are held. The business is not expected to generate more traffic than is appropriate for a well-served transit-oriented area, as the site is located within a block of a bus stop serving multiple lines and a half-mile to the 19th Street BART station. Operating characteristics will be memorialized by Conditions of Approval to ensure no nuisances are generated. These conditions will apply to any future operator of the business.

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 a build-out of a vacant commercial space in a new building on the corner of Telegraph Avenue and 26th Street. The floor plan is conducive to activity by providing a lounge and seating facing a stage area. The lounge will reduce noise spilling onto the street.

The proposed establishment will not result in new exterior construction other than signage, which is not part of this permit. The proposal will offer a convenient and attractive business that adds vibrancy and activity to the area.

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 contribute by attracting people to this commercial entertainment area.

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

This finding is not applicable. Any signage or other exterior improvements shall 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.

See General Plan Analysis Section, above.

Additional Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC 17.103.030.A)

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 City intends this area to draw patrons to the district to eat, shop, and be entertained. There is a growing variety of food and beverage establishments in the immediate vicinity of the project site, and a comedy performing arts theatre will only serve to further invigorate the success of this entertainment district. While there are currently 35 active on-sale ABC licenses in this area, this would be the only type 64 license for a non-profit theater. Serving beer and wine for theater performances is unlikely to create nuisances in the neighborhood; conditions of approval regarding nuisances further assures that the activity will not negatively impact the area.

As discussed above, the City's "No Net Increase Goal" (Resolution 75490 C.M.S.), which discourages new licenses, exempts the Central District to realize a lively entertainment district.

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;

There are approximately three civic uses within a three-block radius including First Presbyterian Church of Oakland, the Humanist Church, and Church of Christ. However, the proposal is not anticipated to generate negative impacts to impact the churches. Considering that shows with alcohol will be only planned to be offered during weekend evenings and given the operational characteristics of other successful liquor and entertainment venues in the area, the proposal will not have a negative impact on the area. Further, the proposal will not operate during Sunday mornings, which is the busiest operating time for churches.

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

The proposal contains no additional driveways or parking lots which would interfere with the movement of pedestrians along the street. No outdoor sidewalk café area is proposed.

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 proposal would be in the recently built Telegraph Arts Building at 471 26th Street. The project does not include any exterior changes to the building. Any future signage, would need Bureau of Planning review and approval.

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

The proposal does not involve any exterior changes to the building. Any future signage would need Bureau of Planning review and approval. The site does not contain a surface parking lot.

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

The use is not expected to generate significant trash or litter at or adjacent to the site. Nonetheless, staff will clean the site and adjacent public right-of-way daily as required by Conditions of Approval.

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 property is not located in the vicinity of street level residences. The theatre will only host shows on the weekends until 12am. As conditioned, the applicant will provide significant soundproofing during their build out of the commercial space. The nature and scale of the service provided will not be in excess of what will normally be expected in the Central District.

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 inapplicable; the proposal does not involve a fast-food restaurant.

Additional Findings of Public Convenience or Necessity (OMC Sec. 17.103.030.B.3)**a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and**

The proposal site is located within the Community Commercial (CC-2) Zone "The CC-2 Zone is intended to create, maintain, and enhance areas with a wide range of commercial businesses with direct frontage and access along the City's corridors and commercial areas." The proposal conforms to this intent and the following Policies of the LUTE.

- *Objective I/C3*
- *Policy I/C8 Providing Support Amenities near Employment Centers*
- *Objective I/C3*
- *Policy I/C3.5 Promoting Culture, Recreation and Entertainment*
- *Policy D5.1 Encouraging Twenty-Four Hour Activity*

b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

The proposal will have a positive influence on the community by providing classes and workshops for students of all ages who want to improve their communication, public speaking, and comedy performance skills. In addition, weekend shows will enhance the variety of social and beverage offerings in the Central District serving residents, visitors and workers.

The proposal will increase nighttime pedestrian activity and result in additional "eyes on the street." Conditions of Approval will ensure positive operational characteristics.

c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

On-site sale of alcohol is typical for theaters, particularly in a Central District.

ATTACHMENT B: CONDITIONS OF APPROVAL**Part 1: Standard Conditions of Approval –
General Administrative Conditions**

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 received on May 5th 2022, 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.

Part 2: Standard Conditions of Approval – Environmental Protection Measures

AESTHETICS

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 nonresidential 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:

- c. 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.
- d. 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

NOISE

14. 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

Part 3: Standard Conditions of Approval – Other Standard Conditions

15. 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

Part 4: Project Specific Conditions of Approval

16. Inclusion of Conditions in State Department of Alcoholic Beverage Control (ABC) License.

Requirement: The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control (ABC) stipulating that they wish to include conditions of their ABC license. The City 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.

When Required: Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

Initial Approval: N/A

Monitoring/Inspection: N/A

17. Conformance with State Department of Alcoholic Beverage Control (ABC) Regulations.

Requirement: The approved activity shall conform to all provisions of the State Department of Alcoholic Beverage Control (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.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

18. Compliance with City of Oakland Special Regulations for Alcoholic Beverage Sales Commercial Activities mance with State Department of Alcoholic Beverage Control (ABC) Regulations.

Requirement: The applicant shall ensure that at least one sign (one square foot minimum with two-inch minimum letters) is posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering as specified in these conditions of approval. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to the establishment. The “No Open Container” signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

When Required: Within 30 days of this approval.

Initial Approval: N/A

Monitoring/Inspection: N/A

19. Visual Access

Requirement: The applicant shall keep windows clear of visually obstructions including, but not limited to signage beyond 10 percent window coverage, any advertising displays, chip/product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. The property shall maintain good sight lines in and out of the store to allow police to monitor activity inside and to allow store staff to monitor and discourage inappropriate activity in front of the store. Note that this is more restrictive than the state regulations related to signage.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

20. Operating Hours

Requirement: Operating hours for the business shall not operate past 10pm from Sunday through Thursday and not past midnight on Friday or Saturday. These periods may be changed after review by the City Planning Commission at a noticed public hearing. Alcohol shall be sold only during these hours unless limited further by the Department of Alcoholic Beverage Control.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

21. Security Guard

Requirement: A bonded, licensed security guard shall be on duty inside or about the business two hours prior to, during and one hour after theater performances.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

22. Security Camera

Requirement: The applicant shall submit for review and approval of the Planning and Zoning Division, plans for installation of a security camera system that, at a minimum, provide visual cover of all exterior portions of the subject property, the entrance to the store and the cash register. No camera shall be directed into the adjacent residential properties without the written consent of the residential property owner. The system shall be installed and operational prior to final inspection or occupancy permits. Video records shall be maintained for a minimum of 72 hours before re-use and shall be shared with police if needed or as requested.

When Required: Installation prior issuance of certificate of occupancy; Ongoing.

Initial Approval: N/A

Monitoring/Inspection: N/A

23. Commercial Lighting

Requirement: The applicant shall maintain all on-site lighting to meet the State Business and Professions Code Section 25612, providing enough illumination to identify loiterers standing in the immediate vicinity of the project site's street frontage. Such illumination shall remain on during all hours of darkness when the business is open, but shall be shielded to a point below the light bulb and reflector and not cast unnecessary glare onto adjacent residential properties.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

24. Loitering Signage

Requirement: The applicant shall post at least one "No Loitering" signs on the building façade and other visible locations around the site. Signs shall be of a permanent nature and have letters a minimum of 2 inches in height.

When Required: Prior to commencement of activity.

Initial Approval: N/A

Monitoring/Inspection: N/A

25. Loitering Prevention

Requirement: 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 loiterers who refuse to leave. Persons loitering in the vicinity of 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.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

26. Graffiti Removal

Requirement: Graffiti shall be removed within 72 hours of application. Removal can involve resurfacing of a material and/or color that matches the remaining surface.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

27. On-Site Clean-Up

Requirement: The applicant shall clear litter and debris from the premises and surrounding area of the property on days after performances or as needed to maintain a litter free environment. A portable ashtray, if used, shall remain outside in a location near the entrance and common areas during all times that the building is open for business. The ashtray and litter receptacle shall be emptied as often as needed to prevent overflowing.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

28. Right-of-way Clean-up

Requirement: The applicant shall clear the sidewalk and gutter areas along Telegraph Avenue beyond the property lines along these streets, of litter and debris at least daily or as needed to control litter. The applicant shall sweep or mechanically clean the sidewalk with steam or equivalent measures at least once per month or at least once per week pursuant to Section 25612.5 of the Business & Professions Code as applies to projects involving alcoholic beverage sales.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

29. Litter Receptacles

Requirement: At least one non-flammable external litter receptacle and a maximum of one ashtray shall be installed outside of the building in a place accessible to employees and the public. A portable ashtray may be substituted. The location of any permanent ashtray and litter receptacle shall be reviewed and approved by the Planning and Zoning Division.

When Required: Prior to operation

Initial Approval: N/A

Monitoring/Inspection: N/A

30. Security Guards

Requirement: The applicant shall secure at least one bonded and licensed security guard(s) to work on-site for all group assembly events held on the site.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

31. Emergency Preparedness and Evacuation Plan

Requirement: The applicant shall submit for review and approval by the Planning and Zoning Division and any other relevant City departments, an Emergency Preparedness and Evacuation Plan for the proposed project

When Required: Prior to issuance of any building permits

Initial Approval: N/A

Monitoring/Inspection: N/A

32. Soundproofing Plan

Requirement: The applicant shall submit for review and approval by the Bureau of Planning, a Soundproofing Plan for the proposed project. The soundproofing plan shall show that the proposal meets the performance standards regarding noise in Chapter 17.120 in the Oakland Planning Code.

When Required: Prior to issuance of any building permits

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A