



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input checked="" type="checkbox"/> Other |

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Planning Commission Motion No. 18715 HEARING DATE: OCTOBER 4, 2012

Date: September 27, 2012
Case No.: 2012.0110CEV
Project Address: 2175 MARKET STREET
Zoning: Upper Market Street Neighborhood Commercial Transit District
65-X/40-X Height and Bulk District
Block/Lot: 3543/011
Project Sponsor: Katie O'Brien
FC 2175 Market, LLC
875 Howard Street, Suite 330
San Francisco, CA 94103
Staff Contact: Michael Smith – (415) 558-6322
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 733.11, 733.44 AND 303 OF THE PLANNING CODE TO DEMOLISH AN EXISTING GASOLINE SERVICE STATION AND CONSTRUCT A SIX-STORY, 65 FOOT TALL MIXED USE BUILDING WITH 88 DWELLING UNITS, 44 OFF-STREET PARKING SPACES, AND APPROXIMATELY 6,286 SQUARE FEET OF GROUND FLOOR COMMERCIAL SPACE ON A PROPERTY LOCATED WITHIN THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 40-X/65-X HEIGHT AND BULK DISTRICT, THE MARKET AND OCTAVIA PLAN AREA, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On June 1, 2012, Katie O'Brien of Forest City (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 207.6, 733.11, 733.44, and 303 to allow the demolition of an existing gasoline service station on the property and construction of a six-story, 65 foot tall mixed use building with 88 dwelling units, 44 off-street parking spaces, and approximately 6,286 square feet of ground floor commercial space for a property located within the Upper Market Street Neighborhood Commercial Transit District and a 40-X/65-X Height and Bulk District and the Market and Octavia Plan Area.

On June 1, 2012, the Project Sponsor filed an application for variances from Planning Code Sections: 134, for rear yard; 145.1, for a ground floor non-residential ceiling height that is less than 14-feet in height; 135, for open space exposure; and 140, for dwelling unit exposure.

Pursuant to Section 21083.3 of the California Environmental Quality Act Public Resources Code Section 21000, et seq.)("CEQA") and Section 15183 of the CEQA Guidelines (14 California Code of Regulations Section 15000, et seq.), projects that are consistent with the development density set forth in a community plan for which an Environmental Impact Report (EIR) was certified are exempt from environmental review under CEQA, except as might be necessary to examine whether there are project-specific effects that are peculiar to the project or its site.

The Project is within the boundaries of the Market and Octavia Better Neighborhoods Area Plan ("Market and Octavia Plan"). The EIR for the Market and Octavia Plan (Case No. 2003.0347E; State Clearinghouse No, 2004012118) was certified on April 5, 2007.

The Planning Department has determined that the Project is consistent with the Market and Octavia Plan and the allowable development density established therein and is, therefore, eligible for a Community Plan Exemption ("CPE") under CEQA Section 21083.3 and CEQA Guidelines Section 15183.

The Planning Department prepared a Community Plan Exemption Checklist dated August 15, 2012 to evaluate the potential environmental effects of the Project and to determine whether the Project would have environmental effects that (1) are peculiar to the Project or parcel on which the Project would be located, or (2) were not analyzed as significant effects in the Market & Octavia Plan EIR, or (3) are potentially significant off-site impacts or cumulative impacts that were not discussed in the Market & Octavia Plan EIR, or (4) are more severe adverse impacts than were analyzed in the Market & Octavia Plan EIR. In a Certificate of Determination dated August 15, 2012 (the "CPE Certificate"), the Planning Department concluded that, with the exception of archaeological resources and hazardous materials, the Project would not result in any new potentially significant environmental effects peculiar to the Project, any off-site or cumulative impacts, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Plan EIR.

In order to evaluate the Project's impacts related to archaeological resources and hazardous materials, the Planning Department prepared an Initial Study/Mitigated Negative Declaration. On August 15, 2012, the Draft Initial Study/Mitigated Negative Declaration was published for public review.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth measures to reduce potential environmental effects, including mitigation measures identified in the Market and Octavia Plan EIR that are applicable to the Project, as well as new mitigation measures developed as part of the FMND. These mitigation measures reduce all potential significant impacts to less than significant levels, and are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

On September 4, 2012 an appeal of the Mitigated Negative Declaration was filed with the Department.

On October 4, 2012 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0110C and the Appeal of the Mitigated Negative Declaration, 2012.0110E. The Commission upheld the PMND and approved the issuance of the Final Mitigated Negative Declaration (FMND) as prepared by the Planning Department in compliance with CEQA. In making their decision the Planning Commission reviewed and considered the Final Mitigated Negative Declaration (FMND), staff's September 26, 2012 memorandum in response to the appeal and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Planning Department/Planning Commission found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, [and that the summary of comments and responses contained no significant revisions to the Draft IS/MND,] and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2012.0110E at 1650 Mission Street, Fourth Floor, San Francisco, California.

MOVED, that the Commission hereby adopts the FMND and the MMRP and authorizes the Conditional Use requested in Application No. 2012.0110CEV, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project site is located on the southeast corner of Market and 15th Streets; Lot 011 in Assessor's Block 3543. The triangular-shaped property is 18,525-square feet in area and is occupied by an approximately 1,487-square-foot, single-story nonconforming automotive gas and service station, constructed in 1970. The current development on the property includes one enclosed retail/service building with two automotive service bays, two gasoline pump islands with canopies, associated underground storage tanks, and 11 car share spaces. Ingress and egress to the gas station is from curb cuts along Market Street. The parcel is located with the Market and Octavia Plan Area and was included in the fall 2007 Upper Market Community Design Plan as a potential site to be redeveloped with a mixed-use building.

3. **Surrounding Properties and Neighborhood.** The subject property is located within the Upper Market Street Neighborhood Commercial District, which extends along Market Street from Church to Castro, and on side streets off Market, and is situated at the border of the Eureka Valley, Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

Some areas of the District are noticeably low-rise, automobile oriented lots, with gas stations and single-story commercial establishments with surface parking lots. Just off Market Street there are small-scale residential streets that support the district. In general, the district is a full-service shopping area providing a variety of uses within easy walking distance.

The Upper Market Street district controls are designed to promote moderate-scale development that contributes to Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses. Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

The adjacent property to the east of the subject property is occupied by a two-story commercial building occupied by Walgreens and 24 Hour Fitness. The property has full lot coverage with underground parking that is accessed from Market Street and exits onto 15th Street. To the west across 15th Street is a four-story mixed building that was constructed in 2002. To the south of the subject property on the opposite side of 15th Street is a three-story over basement, Edwardian era apartment building with 12 dwellings surrounded by two- and three-story, low-density Edwardian era, multi-family dwellings. The context to the south of the subject property is within the RTO Zoning District and decidedly fine grain residential that is typified by the buildings on Sharon Street which runs perpendicular to 15th Street behind the subject property.

Development to the north, across Market Street, includes a vacant lot that was once occupied by a gas station, the Swedish American Hall, and a row of one- to four-story Edwardian era mixed use and residential buildings. There is one restaurant use located within the 2100 block of Market Street.

4. **Project Description.** The Project Sponsor proposes to demolish an existing gas station and construct a new 65-foot-tall, six-story, approximately 79,945-gross-square-foot (104,413 -square-foot including parking), mixed-use building containing 88 rental dwelling units, 13 of which will be affordable, and approximately 6,286-square-feet of retail space at the ground floor, a portion of which would be occupied by a yet to be determined restaurant use as defined in Section 790.91 of the Code. The residential portion of the project would include 35 two-bedroom units, and 53 "junior" one-bedroom units, and 45 Class 1 bicycle parking spaces. The portion of the building fronting on 15th Street would be approximately 40-feet in height. The proposed building would contain 44 off-street parking spaces within an underground parking garage with ingress and egress from 15th Street and provide 7,100 square feet of common usable open space.
5. **CEQA Findings.** The Planning Commission has independently reviewed and considered the CPE Certificate and the FMND prepared for the Project and hereby adopts the following findings:
 - A. In reviewing the CPE Certificate and the FMND, the Planning Commission has had available for its review and consideration all information pertaining to the Project in the Planning Department's case file.
 - B. The Planning Commission finds that the Project is consistent with the Market and Octavia Plan for purposes of CEQA Section 21083.3 and CEQA Guidelines Section 15183 and is therefore eligible for a CPE.
 - C. The Planning Commission finds that, except with respect to archaeological resources and hazardous materials, the Project would not result in any new significant environmental effects peculiar to the Project, any off-site or cumulative impacts, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Plan EIR, as shown in the analysis of the Certificate of Determination for the CPE.
 - D. With respect to archaeological resources and hazardous materials, the Planning Commission finds that, with the implementation of the mitigation measures set forth in the MMRP ("Exhibit C") all potential environmental effects of the Project would be reduced to less than significant levels.
 - E. The Planning Commission finds that the contents of the CPE Certificate and the FMND and the procedures through which they were prepared, issued, publicized and reviewed comply with CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.
 - F. The Planning Commission finds that the CPE Certificate and the FMND are adequate, accurate and objective and reflects the independent analysis and judgment of the Department of City Planning and Planning Commission.
 - G. The mitigation measures listed in the MMRP ("Exhibit C") were identified in the FMND as reducing or eliminating potential environmental impacts of the proposed project. The Planning Commission hereby adopts the MMRP, including all of the mitigation measures identified in Exhibit C.

- H. The Planning Commission finds that the proposed project could not have a significant effect on the environment, as shown in the analysis of the CPE Certificate and FMND.
6. **Public Comment.** The Department received a letter of support from the Merchants of Upper Market and Castro (MUMC). No other public comment has been received.
7. **Planning Code Compliance:** The Commission finds that the project is consistent with the relevant provisions of the Planning Code in the following manner:
- A. **Restaurant Use.** Planning Code Section 733.44 requires Conditional Use Authorization to establish a restaurant use as defined in Section 790.91 of the Planning Code.
- (1) **Additional Conditional Use Criteria Applicable to Eating and Drinking Uses.** Under Planning Code Section 303(p), with regard to a conditional use authorization application for a Restaurant, Limited-Restaurant and Bar uses in Neighborhood Commercial Districts or Mixed Use Districts, the Planning Commission shall consider, in addition to the criteria set forth in Subsection 303(c):
- (A) The existing concentration of eating and drinking uses in the area. Such concentration should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject site. For the purposes of this Section of the Code, the immediate area shall be defined as all properties located within 300' of the subject property and also located within the same zoning district.

The Project Sponsor is requesting conditional use authorization to establish a yet to be determined restaurant use within an approximately 2,365 square-foot ground floor commercial space along Market Street. There is one restaurant use located within the 2100 block of Market Street. Planning staff has performed a site survey of the Upper Market Street NCT District within 300 feet of the property; approximately 19% of the commercial frontage is dedicated to eating and drinking establishments, including the proposed restaurant, which is below the 25% threshold established under Planning Code Section 303(p). The project will not prevent the Upper Market Street NCT District from achieving optimal diversity in the types of goods and services available in the neighborhood.

- B. **Open Space.** Planning Code Section 135 requires 60 square feet of private usable open space or 80 square feet of common open space for each dwelling unit.

The project includes 88 dwelling units and is required to provide a total of 5,280 square feet of private open space, 7,040 square feet of common open space, or some equivalent combination of private and common open space. The project proposes to meet the open space requirement by providing common usable open space within the courtyard and on a roof deck for a total of approximately 7,040 square feet of common usable open space, in compliance with the amount of usable open space required by the Planning Code.

- C. **Streetscape Improvements.** Planning Code Section 138.1 requires streetscape and pedestrian improvements for new developments. One street tree is required for every 20 lineal feet of street frontage. The Section also requires additional streetscape and pedestrian elements for large projects.

The project has 215 feet of frontage on Market and 236 feet of frontage on 15th Street and would provide 12 street trees at the Market Street frontage and 10 street trees at the 15th Street frontage. The size of the project also requires additional streetscape and pedestrian elements to meet the requirements of the Better Streets Plan. To meet the objectives of the plan, the project will include a bulb out at the southeast corner of Market and 15th Streets.

- D. **Lot Size per Development.** Planning Code Section 733.11 permits development of lots larger than 9,999 square-feet within District with conditional use authorization.

Additional Conditional Use Criteria. Under Planning Code Section 121.1, in addition to the criteria of Section 303(c) of the Planning Code (discussed below), the City Planning Commission shall consider the extent to which the following criteria are met:

- (1) The mass and facade of the proposed structure are compatible with the existing scale of the district.
- (2) The facade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The Project Sponsor is seeking conditional use authorization to develop an existing 18,525 square-foot lot that is developed with an automobile service station. The project site is much larger than the average lot within the District but it is located on a prominent corner site where a larger development is more appropriate to add emphasis and frame the intersection. The façade of the project will contribute to the positive visual quality of the district, which does not possess a prevailing architectural style. The Market Street façade is articulated into three distinct elements with the most provocative element located at the gore corner. The middle section is the largest of the three elements and its vertical proportions in the form of storefronts and bay windows, helps to further break up the building mass of the middle section. The 15th Street frontage would have what appears to be a separate building that is much shorter at 40' than the Market Street frontage. The character of the 15th frontage responds to the finer grain residential buildings to the south of the site. There is a courtyard open space at the center of the site to give the appearance of two separate structures even though they share the same basement podium. Overall, the building responds well to its varied context.

- E. **Floor Area Ratio.** Section 733.20 of the Planning Code restricts non-residential uses to 3.0 to 1.

55,275 square-feet of non-residential uses are permitted pursuant to this Section of the Code. The project would provide approximately 6,286 square-feet of commercial uses, well within the limit prescribed by the Code.

- F. **Rear Yard.** Section 134 of the Planning Code requires a 25% rear yard opposite the Market Street frontage.

The project sponsor is separately requesting a rear yard variance to develop the southern portion of the lot that could not be developed otherwise, in part because of the triangular shape of the lot.

- G. Dwelling Unit Exposure.** Planning Code Section 140 requires that each dwelling unit shall face a public street, a Code-compliant rear yard, or another defined open space.

The project provides a large courtyard in the center of the site. As a result of the courtyard's irregular dimensions the lower dwellings at the east and west ends of the courtyard do not meet dwelling unit exposure requirements. The dwellings towards the center of the courtyard comply with the exposure requirements as do the dwellings that front on Market and 15th Streets. The project sponsor is separately requesting a dwelling unit exposure variance for the units that do not comply with the exposure requirement.

- H. Ground Floor Ceiling Height.** Pursuant to Section 145.1 of the Planning Code, ground floor non-residential uses shall have a minimum floor-to-floor height of 14 feet, as measured from grade.

The ground floor ceiling height for a small portion (less than 25%) of the retail space on the Market Street frontage would be less than 14 feet in height. The reduced ceiling height is all located within the corner retail space which also has a double height ceiling. The Project Sponsor is seeking a variance from this Section of the Planning Code for the portion with the reduced ceiling height.

- I. Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed.

The project would provide active uses along both street frontages including retail space, a residential lobby, and stair access to dwellings above the sidewalk. No less than 60 percent of the street frontage at the ground level would be fenestrated with transparent windows to allow visibility to the inside of the building. The parking garage is located below grade and meets the Building Code definition of a basement.

- J. **Permitted Off-Street Parking, Residential.** Sections 151 and 733.94 of the Planning Code requires no off-street parking but principally permits up to one space for every two dwellings. Conditional use authorization is required to provide up to three spaces for every four dwellings.

The project includes 88 dwelling units and 44 off-street parking spaces for a ratio of one space for every two dwellings, which is principally permitted in the District.

- K. **Permitted Off-Street Parking, Commercial.** Sections 151 and 733.22 of the Planning Code requires no off-street parking for retail and restaurant uses that are less than 5,000 square-feet of occupied floor area.

The project includes three separate retail spaces at the ground floor totaling approximately 6,286-square-feet, which includes an approximately 2,364 square-foot restaurant use. No off-street commercial parking is required because none of the proposed retail spaces total more than 5,000 square-feet.

- L. **Car Share.** Section 166 of the Planning Code requires one car share space for 50 – 200 dwellings.

The project would provide one networked car-share space to meet the residential car share parking requirement. There is no car share requirement for the commercial uses.

- M. **Off-Street Freight Loading (Commercial).** Sections 152 and 733.23 of the Planning Code requires off-street loading be provided in the Upper Market NCT for retail uses exceeding 10,000 square feet in area.

The project contains a total of 6,286 square feet of retail space, therefore, the project is not required to provide off-street loading and provides none.

- N. **Off-Street Freight Loading (Residential).** Sections 152 of the Planning Code requires off-street loading be provided in the Upper Market NCT for residential uses exceeding 100,000 square feet in area.

The project contains a total of approximately 74,838 square feet of residential space, therefore, the project is not required to provide off-street loading and provides none.

- O. **Bicycle Parking.** Section 155.5 of the Planning Code requires 25 Class 1 bicycle parking spaces plus one Class 1 space for every four dwelling units above 50 dwelling units.

The project is required to provide 35 Class 1 bicycle parking spaces and provides 45 Class 1 bicycle parking spaces.

- P. **Residential Density.** Section 733.91 of the Planning Code places no limit on residential density within the District.

The Project Site is 18,525 square-feet in area and provides 88 dwelling units for a ratio of one dwelling unit for each 209 square feet of lot area.

- Q. Dwelling Unit Mix.** Section 207.6 of the Planning Code requires that a minimum of 40% of the dwelling units within a Neighborhood Commercial Transit district shall contain at least two bedrooms.

The Project would provide 35 (40%) two-bedroom units. The remaining 53 dwelling units would be junior- one-bedroom units.

- R. Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of five or more units, where, as applicable here, the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 15% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project or submit to the Department a contract demonstrating that the project's on- or off-site units are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section 1954.52(b), and entered into an agreement with a public entity in consideration for a direct financial contribution or any other form of assistance specified in California Government Code Sections 65915 et seq. and submits an Affidavit of such to the Department. All such contracts entered into with the City and County of San Francisco must be reviewed and approved by the Mayor's Office Housing and the City Attorney's Office. The Project Sponsor has indicated the intention to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed density bonus and concessions provided by the City and approved herein. The Project Sponsor submitted such Affidavit on August 15, 2012 and a draft Costa Hawkins agreement on September 6, 2012. 18715Of the 88 units provided, 13 units will be affordable rental units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable. The Project must execute the Costa Hawkins agreement prior to Planning Commission approval or must revert to payment of the Affordable Housing Fee.

Project Sponsor has also indicated that, in the alternative, it may apply for California Debt Limit Allocation Committee (CDLAC) tax exempt bond financing. If the Project Sponsor receives such funding it may demonstrate that it is eligible for an exemption from the Inclusionary Affordable Housing Program requirement under Planning Code Section 415.3(c)(4) because it provides twenty percent (20%) of all of the Project's on-site residential units as affordable to be occupied only by households whose incomes do not exceed fifty percent (50%) of area median income. In that case, the requirements of the Inclusionary Housing Ordinance, Planning Code Section 415 would not apply for so long as all of the conditions set forth in Planning Code Section 415.3(c)(4) are satisfied.

- S. **Market and Octavia Community Infrastructure Impact Fee.** Per Section 421 of the Code, the project requires payment per gross new square foot of residential and commercial development for the Market and Octavia Community Improvements Fund.
- T. **Market and Octavia Plan Area Affordable Housing Fee.** Per Section 416 of the Code, the project requires payment per gross square foot of new residential development, exclusive of any square footage designated as below market rate under Section 415.1 et seq., or any other residential unit that is designated as an affordable housing unit under a Federal, State, or local restriction in a manner that maintains affordability for a term no less than 50 years pursuant to Section 416.3(c), as part of the Market and Octavia Affordable Housing Fee.
- U. **Shadow.** Section 295 of the Code prohibits any structure that exceeds 40 feet in height from casting any shade or shadow upon any property under the jurisdiction of, or designated for acquisition by, the Recreation and Parks Commission, with certain exceptions identified in the Sunlight Ordinance.

A shadow fan was developed based on the drawings submitted with the application to determine the shadow impact of the project on properties protected by the Sunlight Ordinance. The fan indicates that there is no shadow impact from the subject property on any property protected by the Ordinance.

- V. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Section 83.4(m) of the Administrative Code), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

The Project Sponsor has executed a First Source Hiring Declaration of Compliance with Administrative Code Chapter 83.

8. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The project would replace an unsightly, nonconforming gas station with a contemporary mixed-use building with 88 dwellings and ground floor retail uses, the design of which is compatible with the neighborhood character. The type and intensity of the development is necessary and desirable for a transit corridor. The project will provide a development that is desirable for and compatible with the neighborhood and community because it proposes a density and mix of uses consistent with the Market and Octavia Plan that will activate this portion of Market Street.

B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Project will demolish an underutilized, nonconforming gas station and replace it with 88 units of additional housing within an established neighborhood that is well served by public transit. A majority of the units being provided would be specifically designed to meet the unmet housing needs of the neighborhood. In addition, the project's density necessitates an inclusionary housing requirement which would be met on-site and payment to the Market and Octavia Affordable Housing Fund.

The proposed project will also provide ground floor retail space helping to fill a gap in the district's commercial frontage. These retail spaces will be accessible by walking and transit. In combination, the proposed residential and retail uses, at the densities and scale contemplated, will enhance the existing mixed-use character of the neighborhood.

The 65 foot building height at Market Street steps down to 40 feet at the rear of the site, responding to the finer grained low-density residential uses to the south of the site. The design of the building is distinctive. While the building is relatively large, its size is appropriate for its corner location. Furthermore, the use recesses, bay windows, and rhythm of ground floor storefronts give the building articulation and verticality breaking up the horizontal massing. Also, the rear elevation will be treated architecturally like a separate building to reduce the building scale.

ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

With multiple lot frontages, the project site is well suited for residential mixed-use development, allowing vehicular circulation to take place on 15th Street strengthening the commercial street wall and pedestrian environment on Market Street. All the parking would be located within an underground parking garage that is accessed by a driveway on 15th Street that is within close proximity of another driveway on the adjacent property to the east. The project is well served by transit with F streetcar line operating on Market Street and the Project Site is within close proximity to the MUNI subway station at Church and Market Streets.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The project would consist of high quality residential units and neighborhood serving commercial space. The uses would not generate any noxious or offensive emissions, noise, glare, dust, or odors.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The project would include a landscaped courtyard that flows to the street and a landscaped roof deck. The project would include required street trees along the Market and 15th Street frontages. Parking would be provided in an underground parking garage. The garage entrance is located at the 15th Street frontage near another driveway on the adjacent property in order to minimize interference with pedestrian activity. Loading and service will be accessed off of 15th Street. The project will be required to meet all applicable lighting and signage restrictions.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

With this Conditional Use Authorization and the separately requested variances, the project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of Upper Market Neighborhood Commercial Transit District in that the project is a mixed-use development that will contribute to the definition of Market Street's design and character, will maintain and promote the mix of commercial uses and livability of the district and its surrounding residential areas, and includes residential units on the upper floors, and space for neighborhood-serving commercial uses on the ground floor, which would provide compatible convenience service for the immediately surrounding neighborhoods.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development, which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed development would provide desirable goods and services to the neighborhood and would provide resident employment opportunities to those in the community. The project would replace a marginal, nonconforming, and unattractive gas station use with essential housing and neighborhood serving commercial uses. The project would not result in any undesirable consequences. Further, the Project Site is located within a neighborhood commercial district and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The project would strengthen the neighborhood commercial district by replacing a gas station with new commercial space for neighborhood-serving commercial uses and much needed housing. The project would fill in a large gap in the commercial frontage along Upper Market Street.

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.4

Ensure community based planning processes are used to generate changes to land use controls.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The project creates 88 new rental dwelling units, 13 of which would be affordable units on-site. The project resulted from a community planning process that began in 2007 with a series of community workshops. The Project Site was one of several properties investigated during the process and the design of the project was the result of a collaborative effort between the community, the Department and elected officials. The Project would address the community's desire for smaller, more affordable dwellings by providing 53 junior, one bedroom units. All of the dwellings would be rentals which combined with their smaller sizes provide the more affordable and flexible housing option that the community desires.

The project is well served by public transit affording occupants the ability to use alternate forms of transportation including access to 45 Class 1 bicycle parking spaces for residents.

OBJECTIVE 4:

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.1

Develop new housing, and encourage the remodeling of existing housing, for families with children.

The 34 proposed two bedroom units are sized to provide housing for families with children.

MARKET & OCTAVIA AREA PLAN

Objectives and Policies

OBJECTIVE 2.2:

ENCOURAGE CONSTRUCTION OF RESIDENTIAL INFILL THROUGHOUT THE PLAN AREA.

Policy 2.2.3:

Eliminate residential parking requirements and introduce a maximum parking cap.

Policy 2.2.4:

Encourage new housing above ground-floor commercial uses in new development and in expansion of existing commercial buildings.

The project is a mixed-use development including ground floor commercial space along Market Street with dwelling units above. The off-street residential parking does not exceed the maximum that is principally permitted

OBJECTIVE 5.3:

ELIMINATE OR REDUCE THE NEGATIVE IMPACT OF PARKING ON THE PHYSICAL CHARACTER AND QUALITY OF THE NEIGHBORHOOD.

Policy 5.3.1:

Encourage the fronts of buildings to be lined with active uses and, where parking is provided, require that it be set back and screened from the street.

The project proposes active uses along the Market Street frontage. The entrance to the underground parking garage is located on 15th Street, which is a secondary street, in order to minimize any potential negative impacts.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by providing new commercial space on the ground floor of a modern mixed-use building, filling a large gap in the commercial street frontage. The new business occupying the space would provide future opportunities for resident employment in and ownership of a new business.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The Project Site is located within the Upper Market Neighborhood Commercial Transit District, a mixed-use area consisting of residential and commercial uses. The proposed residential units and new commercial space will complement and enhance the district by providing new housing and business opportunities in the neighborhood. Existing housing in the area would not be affected by the project.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing is removed for this project. The project will enhance the City's supply of affordable housing by providing 13 on-site affordable housing units.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

Approximately 44 off-street parking spaces would be provided for the proposed residential use, consistent with Planning Code requirements. All the parking would be located underground and accessed from the rear of the property eliminating transit and pedestrian conflict on a major transit corridor. The project is also well served by transit. The Project Site is within close proximity to the MUNI subway station at Church and Market Streets. The project would also include 45 Class 1 bicycle parking spaces and one car share space.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The project would not displace any service or industrial establishment. The project would not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses would not be affected by this project.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The project is designed and would be constructed to conform to the structural and seismic safety requirements of the City Building Code.

- G. That landmarks and historic buildings be preserved.

The neighborhood was surveyed as part of the Market and Octavia rezoning effort and it was determined to be located in the eligible, but not-yet-designated, Upper Market Street Commercial Historic District. Through environmental review, the project was determined not to cause a significant adverse impact to the potential historic district. The project site does not contain any designated landmark or historic buildings.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project would have no negative impact on existing parks and open spaces. A shadow fan prepared by the Department shows that the proposed project would not cast shadow on any public spaces or parks. No vista from any park would be adversely affected.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety, and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **ADOPTS** the Final Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and **APPROVES Conditional Use Application No. 2012.0110CEV** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with revised plans on file, dated September 25, 2012, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Planning Commission has reviewed and considered the IS/MND and the record as a whole and finds that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the Market and Octavia Area Plan EIR and contained in the MMRP are included as conditions of approval.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18715. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on October 4, 2012.

Linda D. Avery
Commission Secretary

AYES: Commissioners Hillis, Sugaya, Fong, Antonini, Borden, Moore, and Wu

NAYES: None

ABSENT: None

ADOPTED: October 4, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow the demolition of the existing automobile gasoline and service station and construction of a six-story, 65-foot-tall, 79,945-gross-square-foot (104,413 -square-foot including parking), mixed-use building containing 88 rental dwelling units, 13 of which will be affordable, and approximately 6,286-square-feet of retail space at the ground floor, a portion of which would be occupied by a yet to be determined restaurant use as defined in Section 790.91 of the Code, located at 2175 Market Street Lot 011 in Assessor's Block 3543 pursuant to Planning Code Section(s) 207.6, 733.11, 733.44, and 303 within the Upper Market Neighborhood Commercial Transit District and a 40-X/65-X Height and Bulk District; in general conformance with plans, dated August 20, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.0110CEV and subject to conditions of approval reviewed and approved by the Commission on September 6, 2012 under Motion No 18715. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on September 6, 2012 under Motion No. 18715.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18715 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Mitigation Measures.** Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

5. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the

collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

6. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

7. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

8. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan. The Project Sponsor shall complete final design of all street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

9. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

- a. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
- b. On-site, in a driveway, underground;
- c. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- d. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
- e. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- f. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;

- g. On-site, in a ground floor façade (the least desirable location).
- i. Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

PARKING AND TRAFFIC

- 10. Off-Street Parking for All Units.** All off-street parking spaces shall be made available to project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org .

- 11. Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

PROVISIONS

- 12. First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org

- 13. Market Octavia Affordable Housing Fee.** Pursuant to Planning Code Section 416, the Project Sponsor shall comply with the Market Octavia Affordable Housing requirements through payment of the Market Octavia Affordable Housing Fee in full to the Treasurer,

prior to the issuance by Department of Building Inspection of the first certificate of occupancy for the development project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

14. **Market Octavia Community Improvements Fund.** Pursuant to Planning Code Section 421 (formerly 326), the Project Sponsor shall comply with the Market Octavia Community Improvements Fund provisions through payment of an Impact Fee in full to the Treasurer, or the execution of a Waiver Agreement, or an In-Kind agreement approved as described per Planning Code Section 421 (formerly 326) prior to the issuance by Department of Building Inspection of the construction document for the development project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

15. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

16. **Affordable Units**

- A. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households. The Project contains 88 units; therefore, 13 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 13 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- B. **Unit Mix.** The Project contains 53 junior, one-bedroom units and 35 two-bedroom units; therefore, the required affordable unit mix is eight junior, one-bedroom units and five two-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- C. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
- D. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than fifteen percent (15%) of the each phase's total number of dwelling units as on-site affordable units.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
- E. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
- F. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:
<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.
As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed

- no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.
- b. If the units in the building are offered for rent, the affordable unit(s) shall be rented to qualifying households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average fifty-five (55) percent of Area Median Income under the income table called "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco." The initial and subsequent rent level of such units shall be calculated according to the Procedures Manual. Limitations on (i) occupancy; (ii) lease changes; (iii) subleasing, and; are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
 - c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
 - d. Required parking spaces shall be made available to renters of affordable units according to the Procedures Manual.
 - e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
 - f. The Project Sponsor has demonstrated that the Project is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415* to the Planning Department stating the intention to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed incentives and concessions (as defined in California Government Code Sections 65915 et seq.) provided by the City and approved by this Conditional Use Authorization and the separately requested

- variance determination issued by the Zoning Administrator. The Project Sponsor has executed the Costa Hawkins agreement and will record a Memorandum of Agreement prior to issuance of the first construction document or must revert to payment of the Affordable Housing Fee.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.
 - h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties, if applicable.
 - i. Project Sponsor has indicated that it may apply for California Debt Limit Allocation Committee (CDLAC) tax exempt bond financing. If the Project Sponsor receives such funding and has demonstrated that it is eligible for an exception from the Inclusionary Affordable Housing Program requirement under Planning Code Section 415.3(c)(4) because it provides twenty percent (20%) of all of the Project's on-site residential units as affordable to be occupied only by households whose incomes do not exceed fifty percent (50%) of area median income, then the requirements of this condition 13 (Affordable Units) shall not apply for so long as all of the conditions set forth in Planning Code Section 415.3(c)(4) are satisfied. In accordance with Planning Code Section 415.3(c)(4), if Project Sponsor establishes eligibility thereunder, Project Sponsor must record a Notice of Special Restrictions against the property that provides that, in the event of foreclosure or for any other reason, the Project no longer qualifies as a Project meeting the requirements of Planning Code Section 415.3(c)(4), the Project will either: (i) pay the Affordable Housing Fee plus interest from the date the project received its first construction document for the Project if no affordable units were ever provided or, if affordable units were provided and occupied, then the Affordable Housing Fee with no interest is due on the date the units were no longer occupied by qualifying households; or (ii) provide the required number of on-site affordable units required at time of original Project approval and that those units shall be subject to all of the requirements of the Inclusionary Affordable Housing Program. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and

to MOH or its successor. In the event that there is a foreclosure or other event triggering the above requirement, the requirements of condition 13 shall re-apply, and the Project Sponsor shall record a new Notice of Special Restrictions against the property specifying the manner in which it complies with Inclusionary Affordable Housing Program, including but not limited to any specific units restricted as affordable under Planning Code Section 415.3(c)(4)(C)(ii). The new Notice of Special Restrictions shall provide that the units must comply with all of the requirements of the Inclusionary Affordable Housing Program.

MONITORING

17. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

18. **Revocation due to Violation of Conditions.** Should implementation of this project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

19. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*

20. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

21. **Lighting.** All project lighting shall be directed onto the Project Site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

22. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org