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CITY COUNCIL RESOLUTION 2016-43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALBANY, COUNTY OF
ALAMEDA, STATE OF CALIFORNIA, DENYING THE APPEAL AND APPROVING A DESIGN
REVIEW AMENDMENT FOR A RETAIL DEVELOPMENT AT
1075, 1095, AND 1080 MONROE STREET**

WHEREAS, On December 6, 2004, the City Council of the City of Albany adopted Ordinance #04-09 establishing Chapter XX "Planning and Zoning" of the Albany Municipal Code; and

WHEREAS, Chapter XX established development standards and review procedures for new commercial and mixed use construction; and

WHEREAS, the Albany City Council approved Resolution 93-4 adopting San Pablo Ave. Design Guidelines on January 19, 1993; and

WHEREAS, the San Pablo Ave. Design Guidelines specifically identify UC Village as having the greatest impact of any potential development on the Corridor and that the quality of buildings associated with the University of California should be directly related to the frontage of San Pablo Ave.; and

WHEREAS, in 2007 the Regents of the University of California, serving as the master developer for the site, submitted an application for a mixed use development on the San Pablo Avenue frontage of University Village property located at the northwest and southwest corner of the intersection of San Pablo Avenue and Monroe Street; and

WHEREAS, the City Council, acting as lead agency, prepared a draft and final Environmental Impact Report ("EIR") in accordance with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq.; and on July 9, 2012

1 in Resolution #2011-51 certified that the EIR was completed in compliance with the
2 requirements of CEQA and reflected the Council's independent judgment and analysis;
3 and

4
5 **WHEREAS**, the project is within the scope of the EIR certified by the City Council in
6 Resolution 2011-51, and the addendum to the EIR approved on May 6, 2013. Nothing in
7 the current application constitutes significant changes to the project studied in the EIR
8 and addendum and any revisions are not substantial and will not cause any new
9 significant impacts, or substantially more severe impacts than those evaluated in the EIR
10 such that a subsequent or supplemental EIR or negative declaration would be required
11 pursuant to CEQA Guidelines sections 15162 and 15163; and none of the other
12 conditions described in CEQA Guidelines section 15162 calling for the preparation of a
13 subsequent EIR or negative declaration have occurred; and

14 **WHEREAS**, on July 16, 2012, the City Council approved a series of policy-level
15 actions associated with the University Village Mixed Use project including zoning map
16 amendments, zoning text amendments, planned unit development, density bonus to
17 accommodate a senior housing project, grocery store, and retail space; and

18 **WHEREAS**, on May 6, 2013, the City Council, acting as lead agency, approved
19 Resolution 2013-22 of the Albany City Council modifying mitigation measure GCC-1 and
20 the mitigation monitoring and reporting program for the University Village Mixed Use
21 development and adopted an EIR addendum; and

22
23 **WHEREAS**, beginning in 2013, the Planning & Zoning Commission held a series of
24 study sessions on the Planning, Zoning and Subdivision actions associated with the
25 project; and

26 **WHEREAS**, the Planning & Zoning Commission held public hearings on May 8,
27 2013, June 12, 2013, July 24, 2013, October 9, 2013, October 30, 2013, November 20,
28

1 2013 and December 11, 2013 to discuss the project design, scope, and improvements;
2 and

3
4 **WHEREAS**, the application is for a retail use in the San Pablo Commercial Zoning
5 District/University Village San Pablo Avenue Overlay District; and

6
7 **WHEREAS**, on March 5, 2014, the City Council held a public hearing and
8 approved tentative maps for each component of the UC Village Mixed Use Project and
9 design review for the senior housing project and the retail components at 1075 and
10 1095 Monroe Street; and

11
12 **WHEREAS**, on September 9, 2015, the Planning & Zoning Commission held a
13 public hearing, considered all public comments received, the presentation by City
14 staff, the staff report, and all other pertinent documents regarding the proposed
15 request, and approved design review for 1080 Monroe Street; and

16
17 **WHEREAS**, on November 2, 2015, the City Council held a public hearing,
18 considered an appeal and all public comments received, the presentation by City
19 staff, the staff report, and all other pertinent documents, and denied the appeal and
20 approved design review for 1080 Monroe Street; and

21
22 **WHEREAS**, in October 2007, the City of Albany adopted the Art in Public Places
23 Ordinance to promote the acquisition, construction, installation, restoration, and
24 maintenance of public art pieces which provides for a 1.75%-for-art fee on new
25 developments over \$300,000; and

26
27 **WHEREAS**, on December 14, 2015 and February 8, 2016, the Arts Committee held
28 public hearings to review a proposed artwork feature to satisfy the Art in Public Places
Program; and

1 **WHEREAS**, on February 23, 2016, the Arts Committee held a public hearing,
2 considered all public comments received, the presentation by City staff, the staff
3 report, and all other pertinent documents regarding the proposed public art feature
4 and recommended that the Planning & Zoning Commission approve a design review
5 amendment for 1075, 1095, and 1080 Monroe Street to incorporate the public art
6 concept; and

7 **WHEREAS**, on March 9, 2016, the Planning & Zoning Commission held a public
8 hearing, considered all public comments received, the presentation by City staff, the
9 staff report, and all other pertinent documents regarding the proposed request for a
10 design review amendment to include a public art feature to accommodate the Art in
11 Public Places Program requirement for 1075, 1095, and 1080 Monroe Street; and

12 **WHEREAS**, an appeal of the Planning & Zoning Commission decision was filed
13 with the City on March 23, 2016 by Ed Fields; and

14 **WHEREAS**, the appellant, Ed Fields, identified six issues as the basis for the appeal:

- 15 1. Valuation of the retail project should be higher to account for the higher
16 value "assembly" (restaurant) category.
- 17 2. A condition of approval applied to the project regarding the third party
18 valuation of public art conflicts with a Public Art Ordinance requirement.
- 19 3. The City should not be processing the building permit application for the retail
20 component of the project since the submittal requirements for the public art
21 feature have not been met.
- 22 4. The Final Map should not be approved by the City Engineer until the Design
23 Review amendment has been approved and this appeal has been denied.
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1 5. The Planning & Zoning Commission failed to amend design review approval
2 to demonstrate progress toward LEED Gold certification, consistent with the
3 project conditions of approval.

4 6. The Planning & Zoning Commission failed to review the locations and design
5 of AC Transit bus stop relocations, consistent with the project conditions of
6 approval.

7 **WHEREAS**, on March 24, 2016, the Traffic & Safety Commission held a public
8 hearing to review detailed information regarding the location and design of AC
9 Transit's bus stop relocation related to the UC Village Mixed Use Project; and
10

11 **WHEREAS**, on April 13, 2016, the Planning & Zoning Commission reviewed the
12 detailed bus stop plans, the Traffic & Safety Commission's discussion, and the progress
13 toward LEED Gold for 1075, 1095, and 1080 Monroe Street; considered all public
14 comments received, the presentation by City staff, the staff report, and all other
15 pertinent documents regarding the proposed request for a design review amendment
16 for 1075, 1095, and 1080 Monroe Street to include the progress toward LEED Gold; and

17 **WHEREAS**, the action of the Planning & Zoning Commission from the April 13, 2016
18 hearing was not appealed; and
19

20 **WHEREAS**, the City scheduled the City Council hearing on the appeal of the
21 March 9, 2016 Planning & Zoning Commission action for June 6, 2016 pursuant to
22 Section 20.100.080 (E) (1); and

23 **WHEREAS**, a public hearing notice was mailed to property owners within 300 ft. of
24 the subject site and was posted in three public places on May 27, 2016 for the City
25 Council hearing pursuant to Government Code Section 65090; and
26

27 **WHEREAS**, Planning and Zoning Code Section 20.100.080.F establishes the
28 following standards for review of appeals:

1
2 When reviewing any decision of the Planning and Zoning Commission on appeal,
3 the City Council shall use the same standards for decision making and is required
4 to make findings in accordance with the Municipal Code. The Council may
5 adopt the Planning and Zoning Commission's decision and findings as its own. In
6 either case, the City Council shall have the option to prepare a resolution stating
7 the council's decision or shall render its decision by minute action.

8 **WHEREAS**, the staff report prepared for the June 6, 2016 City Council hearing
9 responds to the issues filed by the appellant and provides analyses and findings in
10 response to the appeal; and

11
12 **WHEREAS**, on June 6, 2016 the City Council held a public hearing, considered all
13 public comments received, the presentation by City staff, the staff report, and all other
14 pertinent documents regarding the proposed request; and

15 **WHEREAS**, conditions of approval were modified in response to issues raised in
16 the appeal; and

17
18 **WHEREAS**, modifications to the conditions of approval do not result in any new
19 significant environmental effects or a substantial increase in the severity of previously
20 identified significant effects, and no additional mitigation measures are required;

21
22 **NOW, THEREFORE, THE CITY OF ALBANY CITY COUNCIL DOES HEREBY FIND AND**
23 **RESOLVE AS FOLLOWS:**

24
25 **Section 1**

26 **The City Council finds and determines the foregoing recitals to be true and**
27 **correct and hereby makes them a part of this Resolution.**

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Section 2

Based on the reasons and evidence set forth in the staff report and contained in the administrative record, the City Council denies the appeal.

Section 3

Findings for approval consistent with Section 20.58.070 (Implementation Procedures for the Art in Public Places Program) of the Albany Municipal Code:

- 1. Finding Required for Approval:** The proposed Public Art Feature is consistent with all applicable design review standards or guidelines adopted by the City.

Evidence: The public art feature supports the San Pablo Avenue Design Guidelines' vision for a retail boulevard by creating a unique piece of artwork integrated into the landscape and site furnishings, and complementary to the retail buildings. The artwork helps to create a "special commercial environment" and provide details at the pedestrian level as desired by the Guidelines by helping to create a sense of place that is human-scaled and accessible on foot, by bicycle, on transit, and by car.

Additionally, the proposed public art complies with Section 20.100.050 of the Albany Municipal Code regarding design review. The project conforms to the General Plan, and planned unit development (PUD) of Parcel A and Parcel B of the UC Mixed Use Development (Resolution 2014-23). It will result in improvements that are visually and functionally appropriate to the site conditions and harmonious with the surrounding buildings and landscaping. The artwork is accessible and meets public health, safety, and general welfare of those who reside in the area.

- 2. Finding Required for Approval:** The Public Art Feature is an original work of high aesthetic quality.

1 **Evidence:** The artist is at the forefront of exploring the intersections of design with
2 advanced fabrication technologies to build unique art in public space. The
3 artist's work has been featured in installations across the U.S., including several
4 locations in the Bay Area, and at the SFMOMA and Yerba Buena Center for the
5 Arts. This particular proposal is a new design and form of expression for the artist.

- 6
7 **3. Finding Required for Approval:** The Public Art Feature is designed and
8 constructed in a manner and with materials that are adequate for the long-term
9 integrity of the art and that will require a low level of maintenance to ensure that
10 it remains in good condition for the intended life of the public art feature.

11 **Evidence:** The galvanized metal piping with stainless steel fittings and resin panels
12 are durable and will be subject to modest, but regular maintenance. The
13 footings for the installation will be designed by a qualified licensed professional
14 to ensure long-term safety and stability.

- 15 **4. Finding Required for Approval:** The scale, material, form, color, and content of
16 the proposed Public Art Feature is compatible and in harmony with the location
17 and its surroundings.

18
19 **Evidence:** The height of the sculpture is consistent with the one-story retail
20 buildings surrounding the artwork, and appropriate for a walkway area, allowing
21 visibility and access through and under the canopy structure without obstruction.
22 The galvanized steel piping will reflect, without strong glare, the colors and lights
23 surrounding the installation, while the white and blue colors for the resin panels
24 are consistent with the open sky above and complementary to the colors on the
25 adjacent approved buildings.

- 26 **5. Finding Required for Approval:** There is reasonable public accessibility or visibility
27 to the Public Art.
28

1 **Evidence:** The public art installation will be located in a publically accessible
2 area, with access via sidewalks, ramps, and crosswalks between each of the
3 approved retail buildings and public streets. Benches are proposed adjacent to
4 the public art installation.

5
6 **NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Albany denies
7 the appeal based on the analyses and findings in the staff report and hereby approves
8 an amendment for Design Review for the retail component of the University Village
9 Mixed Use Project at 1075, 1095, and 1080 Monroe St. subject to Exhibit A Conditions of
10 Approval and Attachment 3 Public Art Proposal.

11 PASSED AND ADOPTED by the City Council of the City of Albany on the 6th day of June
12 2016.

13
14 AYES: *Council Members: Barnes, McQuaid, Nason, Pilch + Mayor Maass*

15
16 NOES:

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18 ABSENT:

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20 ABSTAIN:

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24 MAYOR MAASS

25 ATTEST: *Nicole Almaguer*

26
27 Nicole Almaguer
28 Albany City Clerk

Exhibit A
Conditions of Approval - Public Art

GENERAL PROJECT CONDITIONS

- Gen-1 **Project Approval.** This Design Review approval is for public art installation at 1075, 1080, & 1095 Monroe Street, as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans prepared by Future Cities Lab, date received February 2, 2016, as presented to the City Council on June 6, 2016. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
- GEN-2 **Project Approval Expiration.** This Design Review approval expire on June 6, 2017 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless a building permit has been issued and construction diligently pursued. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days before expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
- Gen-3 **Public Arts Master Plan.** The final public art design and implementation, including but not limited to fabrication, installation, operation, and maintenance, shall be consistent with the City of Albany Public Arts Master Plan and Art in Public Places Program (per Section 20-58 of the Municipal Code).
- Gen-4 **Fees.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.
- GEN-5 **Requirement for Building Permit.** Approval granted by the City Council does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

- GEN-6 **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7 **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8 **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- GEN-9 **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-10 **Hold Harmless Agreement.** Pursuant to Albany Municipal Code Section 20.100.010 (N), the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.
- GEN-11 **Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-12 **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-13 **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards. The necessary plans and documentation shall be submitted at time of building permit application.

MITIGATION MONITORING AND REPORTING PROGRAM

- MMRP-1 **Mitigation Measures.** The applicant shall comply with all mitigation measures associated with the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) for the University Village Mixed Use Development.

ARCHITECTURE CONDITIONS

- ART-1 Valuation - The applicant is responsible for providing documentation of the value of the public art feature prior to building permit approval. Such documentation shall be provided by an independent third party with qualifications acceptable to the Community Development Director. The cost of services or utilities necessary to operate or maintain the artwork over time shall not be included in the valuation of the Public Art Features. The required project estimate for the artwork may include the following expenses:
- a) Artist design and fabrication fees.
 - b) Labor of assistants, as well as materials and contracted services required for the production and installation of the work of art.
 - c) Any required permit and certificate fees, business or legal costs directly related to the project, including appraisal costs.
 - d) Project-related insurance.
 - e) Production of material samples of critical elements, for matching purposes during construction.
 - f) Dealer's fees. (The National Endowment for the Arts and several other arts agencies recommend that no more than 10% of the artist's fee be paid as a dealer/gallery commission.)
 - g) Transportation of the work of art to the site.
 - h) Preparation of the site to receive artwork.
 - i) Installation of the completed work of art.
 - j) Documentation (color slide and photographs) of the artwork's fabrication, installation, and plaques to identify the artwork.
 - k) Dedication ceremony.
 - l) Other costs not on this list on an approval basis by Committee.
- ART-2 **Ownership.** All Public Art Features installed on private property shall remain the property of the owner of the parcel shall pass to successive owners of the real property. The obligation to maintain the Public Art Feature shall be documented in the form of covenant recorded against the property. Failure to maintain Public Art Feature may be declared a public nuisance, and subject to the enforcement provisions of Chapter XVIII (Nuisances) of the Municipal Code.
- ART-3 **Maintenance.** Responsibility for maintenance of the public art features installed on private property shall be the sole responsibility of the property owner, taking into account the recommendations of the artist as stated in the maintenance criteria provided during installation. Maintenance criteria shall be documented in conditions of approval associated with the project, and if appropriate, documented in the form of a written memorandum recorded on the parcel(s) with the County Recorder's Office.

LIGHTING CONDITIONS

- LGHT-1 **Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.

PUBLIC WORKS DEPARTMENT CONDITIONS GENERAL ENGINEERING CONDITIONS

- ENGR-1 **Geo-Technical Report.** The applicant shall submit, as part of a building permit application, a geotechnical investigation report prepared by a California certified engineering geologist and geotechnical engineer, if determined necessary by the City Engineer. The investigation shall specifically address any hazards of surface fault rupture in accordance with the Alquist-Priolo Special Study Zones Act. Any mitigation measures or conditions requiring further review noted during the Planning process shall be fully addressed prior to plan check.

GRADING CONDITIONS

- GRAD-1 **Grading Permit.** Any grading required in association with the project shall require a grading permit from the Community Development Department. To obtain this permit, the applicant shall submit a grading plan, indicating the extent and volumes of earth proposed to be moved. A grading permit is subject to 2001 California Building, Appendix 33.
- GRAD-2 **Construction Practices.** All construction manuals and best practices prepared for grading and construction of the buildings at 1075 and 1095 Monroe St.—including, but not limited to erosion controls, dust control programs, and the Stormwater Pollution Prevention Plan (SWPPP)—shall be implemented and adhered to, as part of the public art construction.

GENERAL CONSTRUCTION BEST MANAGEMENT PRACTICES (BMPs)

- BMP-CNST1 **Construction Access Routes.** Construction access routes shall be limited to those approved by the City as part of the Construction Traffic Management Plan for the construction of the buildings at 1075 & 1095 Monroe Street.
- BMP-CNST2 **Collection of Construction Debris.** Gather all construction debris on a regular basis and place them in a dumpster or other container that is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- BMP-CNST3 **Removal of Waste.** Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- BMP-CNST4 **Sweeping of Public Right-of-Way.** Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping.

- BMP-CNST5 **Filter Materials at Storm Drain Inlet.** Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:
- a) start of the rainy season (October 1);
 - b) site dewatering activities;
 - c) street washing activities;
 - d) saw cutting asphalt or concrete; and
 - e) order to retain any debris or dirt flowing into the City storm drain system.
- Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash.
- BMP-CNST6 **Containment of Materials.** Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill.
- BMP-CNST7 **Cleaning of Equipment.** Never clean machinery, tools, brushes, etc. or rinse containers into a street, gutter, storm drain or stream. See the *Building Maintenance/ Remodeling* flyer for more information.
- BMP-CNST8 **Minimize Removal of Natural Vegetation.** Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Replant the area as soon as possible. All cut and fill slopes shall be stabilized as soon as possible after grading is completed. No site grading shall occur between October 1 and April 15 unless approved erosion and sedimentation control measures are in place.



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

RESOLUTION NO. 2016-43

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

the 6th day of June, 2016, by the following votes:

AYES: Council Members Barnes, McQuaid, Nason, Pilch and Mayor Maass

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

7th day of June, 2016.

Eileen Harrington

Eileen Harrington
DEPUTY CITY CLERK

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.