

1 **RESOLUTION NO. 2022-51**

2 **A RESOLUTION OF THE ALBANY CITY COUNCIL APPROVING**
3 **A NEW 12-UNIT MIXED USE HOUSING PROJECT AT 1600 SOLANO AVENUE**
4 **PURSUANT TO CALIFORNIA DENSITY BONUS LAW (GOVERNMENT CODE**
5 **SECTIONS 65915 – 65918) INCLUDING A CATEGORICAL EXEMPTION FROM**
6 **THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, DESIGN REVIEW**
7 **APPROVAL, AND APPROVAL OF A CONDITIONAL USE PERMIT**

8 **WHEREAS**, On December 6, 2004, the City Council of the City of Albany adopted
9 Ordinance #04-09 establishing Chapter 20 “Planning and Zoning” of the Albany Municipal
10 Code; and

11
12 **WHEREAS**, Chapter 20 established development standards and review procedures for
13 new residential construction, including projects eligible for density bonus pursuant to
14 California Government Code Section 65915-62918; and

15
16 **WHEREAS**, the Albany City Council approved Resolution No. 2016-24 adopting the
17 Albany 2035 General Plan on April 18, 2016; and

18
19 **WHEREAS**, as used in State Density Bonus Law, a development project for five or more
20 residential units, including mixed-use developments is determined to be a “Housing
21 Development”; and

22
23 **WHEREAS**, the granting of a density bonus and incentives or concessions is non-
24 discretionary approvals; and

25
26 **WHEREAS**, on January 7, 2022, Kava Massih Architects, serving as the architect for
27 the project, submitted pre-application plans for Planning & Zoning Commission preliminary
28

1 review for a new 12-unit mixed use housing development at 1600 Solano Avenue in the Solano
2 Commercial (SC) Zoning District; and

3
4 **WHEREAS**, on January 19, 2022, Kava Massih Architects submitted a revised
5 preliminary application for the proposed project; and

6
7 **WHEREAS**, on January 26, 2022 the Planning & Zoning Commission held a study
8 session on the pre-application plans and provided feedback to the applicant; and

9
10 **WHEREAS**, the formal regular application for the “project” was filed by the applicant
11 on March 18, 2022; and

12
13 **WHEREAS**, Section 20.40.040 of the Albany Municipal Code identifies standards and
14 procedures for processing applications pursuant to Government Code Section 65915, State
15 Density Bonus Law; and

16
17 **WHEREAS**, to be eligible for Density Bonus, at least 10% of the housing units must be
18 restricted to lower income residents. The amount of the density bonus is set on a sliding scale,
19 based upon the percentage of affordable units at each income level; and

20
21 **WHEREAS**, the applicant seeks modification to development standards pursuant to
22 State Density Bonus Law in exchange for the provision of affordable units; and

23
24 **WHEREAS**, the California State Resources Agency has determined that certain types of
25 projects are categorically exempt from the requirement to prepare environmental documents
26 pursuant to Public Resource Code sections 21000 et seq. (the California Environmental Quality
27 Act or CEQA) as set forth in California Code of Regulation Title 14, Chapter 3 (CEQA
28 Guidelines); and

1 **WHEREAS**, a public hearing notice was mailed to property owners within 300 ft. of the
2 subject site and was posted in three public places on April 15, 2022 for the Planning & Zoning
3 Commission hearing pursuant to Government Code Section 65090; and
4

5 **WHEREAS**, on April 27, 2022, the Planning & Zoning Commission held a public
6 hearing, considered all public comments received, the presentation by City staff, the staff
7 report, and all other pertinent documents regarding the proposed request; and
8

9 **WHEREAS**, on April 27, 2022, the City of Albany Planning and Zoning Commission
10 approved Resolution 2022-11 forwarding a recommendation to City Council to determine that
11 the proposed project is categorically exempt from CEQA review pursuant to CEQA Guidelines
12 section 15332 regarding “in-fill development projects”; and
13

14 **WHEREAS**, on April 27, 2022, the City of Albany Planning and Zoning Commission
15 approved Resolution 2022-12 forwarding a recommendation to City Council to approve design
16 review and conditional use permit application; and
17

18 **WHEREAS**, a public hearing notice was mailed to property owners within 300 ft. of the
19 subject site and was posted in three public places on May 19, 2022 for the City Council Public
20 Hearing scheduled for June 1, 2022 pursuant to Government Code Section 65090.
21

22 **NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby finds
23 that the proposed project will include two units of housing restricted to households with low
24 income, which pursuant to Government Code Section 65915, allows the project to increase
25 density by 50%, allows the project to request three incentives and concessions, which may
26 include reduction in site development standards or modification from zoning code
27 requirements , and allows the project to request waivers or reductions in development standards
28 that will have the effect of physically precluding the construction of the development; and
29

Exhibit A - Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Albany
1000 San Pablo Avenue
Albany, CA 94706

County Clerk
County of Alameda

Project Title: 1600 Solano

Project Location - Specific: 1600 Solano

Project Location - City: Albany

Project Location - County: Alameda

Description of Nature, Purpose, and Beneficiaries of Project:

An application has been submitted for Design Review and Density Bonus approval of a new approximately 60 ft. tall mixed-used building with 12 housing units and 2,753 sq. ft. of medical space on the first floor at 1600 Solano Avenue. The subject site is 0.12 acres with an existing 1,543 sq. ft. two-story structure. The project is proposed to have two off-street parking spaces. The application includes requests for waivers and concessions from the City's development regulations.

The project site is located in the Solano Avenue business district. Solano Avenue is a two-lane arterial street that serves as a transit route and a truck route.

Name of Public Agency Approving Project: City of Albany

Name of Person or Agency Carrying Out Project: Kava Massih Architects

Exempt Status: (*check one*)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 32 – CEQA Guidelines Section 15332 (Infill Development Projects);
- Statutory Exemptions. State code number:

REASONS WHY PROJECT IS EXEMPT:

Categorically exempt projects are classes of projects that the California State Resources Agency has determined do not have a significant effect on the environment and therefore do not require preparation

of environmental documents. The following is the description of the In-Fill Development Project Exemption.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.*
- c. The project site has no value as habitat for endangered, rare or threatened species.*
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*
- e. The site can be adequately served by all required utilities and public services.*

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

The following explanation is divided into two parts. The first part is an explanation of compliance with the criteria for use of the in-fill exemption. The second part is an explanation of why the exceptions to the use of a categorical exemption (CEQA Guidelines Section 15300.2) do not apply to the proposed project.

EXPLANATION - PART ONE

The following is an explanation of compliance with the requirements of the California Environmental Quality Act Class 32 categorical exemption for in-fill development.:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Explanation: *The property has a General Plan Land Use classification of Solano Avenue Mixed Use and has a zoning designation of SC: Solano Commercial.*

Relevant General Plan Excerpt:

Solano Avenue Mixed Use: This designation applies to parcels with frontage along Solano Avenue or that are otherwise part of the Solano Avenue business district. The Solano Avenue corridor has a “Main Street” character, with small, local-serving shops, offices, restaurants, and services in a pedestrian-oriented setting. The corridor also includes civic uses, multi-family housing, and unique uses such as the Albany Theater. Future development should reinforce this character and include a similar mix of uses. Higher density residential uses are encouraged, if they are located above or behind commercial uses facing Solano Avenue. Buildings that are entirely residential may be considered, subject to conditions specified in the General Plan. Residential uses are subject to a minimum density standard of 20 units per acre and a maximum of 63 units per acre.

Relevant Zoning Code Excerpt:

Solano Commercial District (SC): The Solano Commercial District accommodates commercial uses which supply a wide range of commercial retail and related services both

to the adjacent neighborhoods and the surrounding communities, within an attractive pedestrian-oriented shopping environment. The district also provides opportunities for office development and high-density residential development, including mixed-use settings. The district corresponds to the Solano Avenue Mixed Use designation in the General Plan Land Use Element.

The maximum floor area ratio (FAR) for non-residential space on any given parcel is 1.25 and the maximum building height is 35 feet. Additional floor space, up to a total FAR of 2.0, is permitted provided that the floor space above and beyond the base FAR of 1.25 consists of residential uses, and that these uses are not located on the ground floor facing Solano Avenue.¹

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

***Explanation:** The site is 0.12 acres in size and is located within the city limits of the City of Albany and is surrounded by urban uses including two professional office building to the east, one story retail to the west, low density residential to the south.*

(c) The project site has no value as habitat for endangered, rare or threatened species.

***Explanation:** In addition, the project site is developed with an existing structure and is bordered on all sides with developed properties. As part of the preparation and approval process for the Albany General Plan, in 2016 an environmental impact report was prepared and certified by the City Council. The General Plan EIR evaluated biological resources in the City, including 45 special status plant species and 32 special status animal species. The EIR analysis found that there was “no” or “low” potential for occurrence of special status species in the project location.*

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Explanation Regarding Traffic:

a) *The proposed project is consistent with the Transportation Element of the City of Albany General Plan and City of Albany Active Transportation Plan. The project does not impede the implementation of the following relevant Transportation policies and actions:*

- *Policy T-1.7: Development Review - Require that future development projects address bicycling and walking access in their project plans, and include provisions to accommodate access by all modes of travel.*

Comment: The project includes sidewalk access for pedestrians and bicycle parking facilities.

¹ Pursuant to CEQA case law (Wollmer v. City of Berkeley), modifications and waivers of City development standards, as required under the Density Bonus Law, does not disqualify a project from claiming a CEQA Categorical Exemption.

- *Policy T-2.1: Transit-Oriented Development - Encourage land use patterns and public space designs that support walking, bicycling, and public transit use, thereby reducing greenhouse gas emissions and fossil fuel consumption. Future land use and development choices should maximize opportunities to travel without a car by focusing new growth along walkable, transit-served corridors such as Solano and San Pablo Avenues, and in areas within ½ mile of the El Cerrito Plaza BART station.*

Comment: The project is located on Solano Avenue, which is identified as a walkable, transit-served corridor.

- *Action T-2.I: Multi-Modal Levels of Service - Establish multi-modal level of service (MMLOS) standards for arterial streets, and apply these standards in the evaluation of future development proposals and planning studies. In support of the City's efforts to reduce greenhouse gas emissions, service standards should utilize vehicle miles traveled (VMT) as the primary metric, rather than the total number of trips generated or projected motor vehicle delays.*

Comment: the project is expected to reduce region-wide VMT pursuant to the Alameda County Vehicle Miles Traveled Reduction Estimator Tool (see below for additional information).

- *Policy T-4.10: Emergency Vehicles - Provide adequate access for emergency vehicles as development takes place and as road modifications are completed. The Albany Police and Fire Departments should participate in development review and transportation planning to ensure that adequate access is provided.*

Comment: The project has been reviewed by the Albany Fire Department for adequate emergency access. The Fire Department's aerial ladder will have direct access to all levels of the building and roof.

- *Policy T-6.5: Development-Related Improvements - Require the completion of traffic studies to address the effects of new development, including the improvements needed to accommodate increased traffic or changes in traffic patterns. Based on the findings, collect the appropriate fees needed to complete the improvements and maintain satisfactory operating conditions.*

Comment: Construction permits for the project will be subject to the City's master fee schedule, including development impact fees. The preparation of an update to the City's development impact fees are underway to ensure that new developments in the City pay a fair-share of the cost of new public facilities required to accommodate the project.

- b) *The Alameda County Transportation Commission has created the "Alameda County Vehicle Miles Traveled Reduction Estimator Tool" to help municipalities in Alameda County to evaluate transportation effects of land use projects under the California Environmental Quality Act. The tool reflects Alameda County roadway patterns and traffic volumes, incorporates data from the Alameda County Travel Demand Model, and allows for incorporation of VMT-reducing strategies. Based on the Alameda County Transportation*

Commission Vehicle Miles Traveled Reduction Tool, this project is expected to decrease vehicle miles traveled by 30% Projects that decrease vehicle miles traveled in the project area compared to existing conditions and so the project would have a have a less than significant transportation impact.

- c) *The proposed project will not result in a change to the geometric design of the adjacent roadways feature and does not involve the operation of vehicles or equipment that are incompatible with this location.*

Comment: The City of Albany completed the preparation of the Solano Avenue Complete Streets Study in 2019. For the intersection at the project site, the concept presented was to realign the intersection of Tacoma Avenue and Solano Avenue and install new crosswalks and curb ramps at Ordway and Solano to reduce the length of pedestrian crosswalks across Solano Avenue. The Study was accepted by the City Council with the direction that bicycle safety improvements for Solano Avenue be considered in an updated Active Transportation Plan as part of further development of the concepts in the plan. The proposed project will in no manner interfere with the proposal of the Complete Streets Study with regard to the intersection of Tacoma and Solano Avenues or with the City Council's directions regarding bicycle safety improvements for Solano Avenue.

- d) *The proposed project will not modify any city-owned right-of-way and thus does not result in a change to emergency access to the area.*

Explanation Regarding Noise:

As part of the preparation of the City's General Plan, an analysis of projected noise contours in the City was prepared. Solano Avenue is projected to have a noise level of 60 dBA Ldn by the year 2035, which is compliant with City noise compatibility guidelines.

In addition, as with all building permits, as part of the building permit process for the project, the developer will be required to submit documentation of the methods to be used to ensure that construction of the project will comply with City of Albany General Plan standards for interior noise, as well as California Building Code requirements for sound transmission. In addition, the contractor will be required to comply with City of Albany Municipal Code requirements for construction hours.

Explanation Regarding Air Quality:

Construction of the site will be subject to all relevant Bay Area Air Quality Management District construction-related mitigation measures, including dust control, construction fencing, minimization of vehicle idling, and tarping trucks.

Explanation Regarding Water Quality:

The nearest surface water bodies to the project site are Cerrito Creek to the north and Codornices Creek to the South, both approximately 0.6 miles from the project site, and the San Francisco Bay, which is located approximately 1.4 miles to the west. As part of the City's building permit process, the City will require compliance with the California Regional Water Quality Control Board - San

Francisco Bay Region - Municipal Regional Stormwater NPDES Permit. include appropriate source control, site design, and stormwater treatment measures through the implementation of low impact development techniques.

As part of the building permit review process, the applicant will be required to complete the "Stormwater Requirements Checklist." This checklist was prepared by the Alameda County Clean Water Program, which is an association of the agencies in Alameda County that manage separate storm drain systems and creek channels that discharge urban runoff to San Francisco Bay. The checklist systematically evaluates the existing and future impervious surfaces created by new development and assists in the determination of the level of regulatory requirements.

If the analysis detailed in the checklist results in a determination that a project is subject to NPDES Section C.3 requirements, then the applicant will be required to include site design measures, source controls, and stormwater treatment measures (e.g., typically bio-retention and/or bio-infiltration measures) as specified in the Association's C.3 Technical Guidance document. If the area of impervious surface is less than the requirement established in Section C.3, the project is not subject to Section C.3 requirements, but nonetheless required to incorporate one or more site design measures, source control measures, and construction best management practices listed in the checklist.

(e) The site can be adequately served by all required utilities and public services.

Explanation: All required utilities exist in nearby city right-of-way, and no major off-site improvements are required for the proposed development.

EXPLANATION - PART TWO

CEQA Guidelines Section 15300.2. (Exceptions) lists a series of criteria that limit the use of a Categorical Exemption. The following is an explanation why the proposed project does not meet the criteria of Section 15300.2.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

Explanation: The proposed project would build out the site, and thus no successive projects can be implemented at this location. The City has not received any other applications for nearby projects that might meet CEQA criteria for a significant cumulative effect on the environment.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Explanation: The project does not have any unusual circumstances as it is typical infill development in type and location in the context of the City. (See Wollmer v City of Berkeley (2011) 193 Cal.App.4th 1329, 1351 [rejecting claims that location of infill project at crowded intersection was unusual circumstance, noting that this type of circumstance is expected in infill development

context]; San Lorenzo Valley Community Advocates for Responsible Educ. v San Lorenzo Valley Unified Sch. Dist. (2006) 139 Cal.App.4th 1356 [no evidence that traffic, parking, and access problems are unusual circumstances in context of school consolidations]; Fairbank v City of Mill Valley (1999) 75 Cal.App.4th 1243, 1260 [nothing about small retail and office building sets it apart from other small commercial structures built in urbanized area].) ..

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

Explanation: *Solano Avenue and Ordway Street are not designated Scenic Highways.*

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Explanation: *This site is not listed on the California Department of Toxic Substances Control Board (DTSC) EnviroStor database.*

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Explanation: *The site is not listed on the California Office of Historical Resources “Built Environment Resources Directory.” The City of Albany does not have a local historic resources preservation program.*

Lead Agency Contact Person: Community Development Director Jeff Bond 510-528-5769.

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature:

Date:

Title: Community Development Director

- . Signed by Lead Agency
- . Signed by Applicant

Date received for filing at OPR:

1 **EXHIBIT B**

2 **Design Review Findings and Conditions of Approval**

3
4 **Project element subject to design review:** The proposed design review is to ensure the
5 proposed construction is visually and functionally appropriate to the site and the
6 surroundings, within the limits of discretion available to the City pursuant to California
7 Density Bonus law.

8
9 **Findings required for design review approval pursuant to Albany Municipal Code**
10 **Section 20.100.050 “Design Review” of the Albany Municipal Code**

- 11
12 **1.** The project conforms to the General Plan, any applicable specific plan,
13 applicable design guidelines adopted by the City of Albany, and all applicable
14 provisions of this Chapter.

15
16 **Evidence:** The City's General Plan ("General Plan") designates the property as
17 Solano Avenue Mixed Use. The Property is currently zoned Solano Commercial
18 (SC). The proposed residential project meets City zoning standards for location,
19 intensity and type of development. General Plan Policy LU-4.3 (Health Care
20 Facilities) encourage the development of small-scale facilities such as what is
21 being proposed that meet local health care and medical needs.

- 22
23 **2.** Approval of the project design is consistent with the purpose and intent of this
24 section, which states “designs of projects...will result in improvements that are
25 visually and functionally appropriate to their site conditions and harmonious with
26 their surroundings, including natural landforms and vegetation. Additional
27 purposes of design review include (but are not limited to): that retention and
28 maintenance of existing buildings and landscape features are considered; and
29 that site access and vehicular parking are sufficient.”

30
31 **Evidence:** The proposed project is consistent with the intent of the Solano
32 Commercial District, which is to “accommodate commercial uses which supply a

1 wide range of commercial retail and related services both to the adjacent
2 neighborhoods and the surrounding communities, within an attractive pedestrian-
3 oriented shopping environment. The district also provides opportunities for office
4 development and high-density residential development, including mixed-use
5 settings.”

6
7 The configuration of the four-story mixed use apartment contributes to the variety
8 of building types nearby the project site, which include detached single-family
9 homes of varying lot sizes as well as one story to four story commercial and mixed
10 use buildings along Solano Avenue. The architectural style, design and building
11 materials are of high quality and appropriate: fiber cement panels with translucent
12 glass storefronts and wooden slat details along the ground floor, perforated morin
13 metal panel balconies along upper floors, and rooftop wooden trellis features and
14 roof deck. The project would have site access via multiple modes of transportation
15 including pedestrian and bicycle facilities and transit service on Solano Avenue.

- 16
17 **3.** Approval of the project is in the interest of the public health, safety and general
18 welfare.

19
20 **Evidence:** The project will contribute to the existing “Main Street” character of
21 Solano Avenue by providing additional neighborhood-serving commercial uses to
22 surrounding neighborhoods and increasing the residential population along
23 Solano Avenue that patron commercial businesses along the corridor.
24 Additionally, the project would improve the visual appearance and design of
25 frontage at 1600 Solano Avenue through the development of ground-floor
26 commercial uses that engage with the existing public sidewalks along Solano
27 Avenue and Ordway Street, and installation of Corten streetscape planters and
28 bicycle racks which are proposed as part of the development. Together these
29 project components will improve walkability and connectivity along Solano
30 Avenue by providing the surrounding neighborhoods with additional commercial
31 and residential options, which support the health, safety, convenience and
32 welfare of those that reside in the area.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

4. The project is in substantial compliance with applicable general and specific Standards for Review stated in subsection 20.100.050D.

Evidence: As detailed in the accompanying staff report, the project is in substantial compliance with the Standards for Review, as applicable due to the limitations imposed by California Density Bonus Law. It is consistent with applicable General Plan and Zoning Ordinance, and includes a functional site plan, the development of a mix of uses, and an increase in residential density on the site, and sufficient bicycle parking. The project includes quality architectural design, complementary landscape design, and open space for residents.

CONDITIONS OF APPROVAL

See attached Exhibit B-1 Planning Approval Conditions of Approval

City of Albany

EXHIBIT B-1 PLANNING APPROVAL CONDITIONS OF APPROVAL

Special Conditions of Approval

1. **Special Conditions Recommended by the Planning and Zoning Commission and Approved by City Council.**
 - a. There be charging outlets every 4 feet in the bicycle room;
 - b. the door to the bicycle room be moved to the center of the lobby;
 - c. the entryway door be made transparent;
 - d. the bike room be made large enough to accommodate 12 cargo bikes and 12 other bicycles; and

2. **Special Conditions Added by City Council**
 - a. At least one intermediate sized 2-bedroom unit to be designated as affordable unit.
 - b. Provide power receptacle to cargo bike parking space.
 - c. Install bike-shaped bike rack in city right-of-way

General Conditions

3. **Project Approval.** This Design Review Approval, and approval of a Conditional Use Permit approval pursuant to California Density Bonus Law is for Planning Application 2021-015 for 1600 Solano Avenue, as substantially shown and described on the project plans, except as required to be modified by conditions herein. Plans prepared by Kava Massih Architects date received May 27, 2022, as presented to the Albany City Council on June 1, 2022. For any condition herein that requires preparation of a Final Plan where the project applicant has submitted a conceptual plan, the project applicant 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.

4. **Project Approval Expiration.** This Design Review and Conditional User Permit approval expires on June 1, 2023 (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

<p>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 for up to two additional years from the expiration date.</p>
<p>5. Fees. The applicant shall pay 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 applicant shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and applicant.</p>
<p>6. 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.</p>
<p>7. Modifications to Approved Plans. The project shall be constructed as approved and with any additional changes required pursuant to staff or City Council Conditions of Approval. Planning staff may approve minor modifications in the project design, but not the permitted land use (per AMC 20.12). A change 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.</p>
<p>8. 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.</p>
<p>9. Affordable Housing Agreement. The applicant shall enter into a regulatory agreement with the City guaranteeing that two (2) units will be designated affordable for low income households as established by the California Department of Housing and Community Development for Alameda County. The City Council shall approve the Affordable Housing Agreement prior to issuance of any demolition, grading or building permit.</p>

<p>10. Public Art. The applicant shall make a contribution to the Art in Public Places fund or submit an application to amend design review approval to incorporate public art consistent with the City of Albany Municipal Code (Section 20.58) and the Public Arts Master Plan. If on-site art is proposed, the Arts Committee and the Planning and Zoning Commission shall review the installation, including specific design concept, materials, location, lighting, safety considerations, etc. as described in the Public Art Master Plan.</p>
<p>11. Address Assignment. The applicant shall request and garner approval of an address assignment for the new building.</p>

Building Permit Submittal Requirements

<p>12. Project Conditions. The project Conditions of Approval shall be included as a separate page in the building permit plan set and shall be signed by the applicant.</p>
<p>13. Drainage Plan. Construction plans shall indicate how the site grading or drainage system will manage all surface water flows to keep water from entering buildings on the subject site or on neighboring properties. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. A drainage plan must show the following information for both existing conditions and proposed conditions:</p> <ul style="list-style-type: none">a. Property lines;b. Site topography and direction of surface flow;c. Roof plan and location of rain leaders;d. Location of drainpipe including size, length, vertical height/slope, and locatione. of cleanoutsf. Show detail of discharge pipe under sidewalk in compliance with City standardsg. Show areas of hardscape and soft scape;h. Calculation of pervious and impervious lot coverage.i. Submit a completed the NPDES compliant Stormwater Requirements Checklist form
<p>14. Soils Investigation - A soils investigation by a licensed professional is required for new construction.</p>
<p>15. Landscaping. Landscaping shall be designed for compliance with the Water Efficient Landscape Ordinance and to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution. Bay Friendly Landscaping practices are strongly encouraged. If a landscaping plan is required as part of an</p>

<p>application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:</p> <ul style="list-style-type: none">a. Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.b. Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.c. Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.d. Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.
<p>16. Street Tree Requirement. The City Arborist will determine the type and location of any required street tree and may waive this requirement if site conditions will not reasonably support establishment of a new tree. If required by the City Arborist, the applicant shall apply for one street tree before the issuance of the building permit.</p>
<p>17. Construction Management Plan. The applicant shall prepare a Construction Management Plan addressing, at a minimum:</p> <ul style="list-style-type: none">a. Proposed truck routes to be used by construction vehicles, consistent with the City’s truck route map.b. Contractor parking plan (number of spaces and planned locations) to be accommodated within the project site or other approved off-site location. Note: Encroachment permits are required to reserve any on-street parking for construction equipment.c. Construction equipment and materials staging areas, to avoid conflicts with traffic, pedestrian, and bicycle circulation patterns.d. Expected detours needed, planned duration, and traffic control plans, including potential sidewalk closures.e. Fencing plans to separate construction area from public access and circulation for residents of the existing units to remain.f. Traffic controls (e.g., flaggers) for big delivery or equipment events such as dirt off-haul.
<p>18. Stormwater Pollution Prevention Control Measures. The project plans shall include stormwater pollution prevention and control measures for the operation and maintenance of the project during construction. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into stormwater runoff.</p>

<p>19. Above Ground and Rooftop Utilities. All above-ground utilities shall be shown on the building permit plans at the time of submittal. Rooftop mechanical systems shall be set back from the roof line and/or screened by parapet walls or similar means to avoid visibility from ground-level. At-grade utilities shall not be placed in required setback areas, and shall be screened with architectural features, landscaping, or similar means, to the satisfaction of the Community Development Director.</p>
<p>20. Sewer System Requirements. The sewer system for the subject site shall comply with Chapter 15 of the Albany Municipal Code and the East Bay Municipal Utility District.</p>
<p>21. Color and Material Verification. The applicant shall provide the City with brush-outs of paint colors and material samples for review and approval by the Community Development Director.</p>
<p>22. Noise Management. Applicant is required to submit documentation of the methods to be used to ensure that construction of the project will comply with City of Albany General Plan standards for noise generation, as well as California Building Code requirements for sound transmission.</p>

Fire Department Requirements

<p>23. Gallons-per-Minute Requirement. The water system for fire protection shall comply with City of Albany Fire Department standards. Fire flow test data and water system plans must be provided at time of building plan check. The plans must include all equipment, components and layout of the system. Private fire protection water systems shall be supplied through an approved backflow device per City Engineering Division standards.</p>
<p>24. Distance From Fire Hydrant. Before building permit issuance the distance from existing fire hydrants to the building shall be verified and included on the building permit plans. If necessary, a new hydrant shall be shown on the plans and installed prior to combustible construction.</p>
<p>25. Building Code Compliance. New construction shall comply with California and City Building and Fire Codes, as may be amended by the City Council, which specify requirements such as fire alarm systems, fire sprinkler systems, fire protection water supplies, apparatus access to buildings, firefighter roof access, emergency exit ways for occupants, and elevators sized to accommodate ambulance gurneys.</p>

<p>26. Development Impact Fee. An update to the City’s development impact fee program, and if approved by the City Council, the project can pay an appropriate fee that contributes to the cost of new fire department apparatus.</p>

Construction Related Conditions of Approval

<p>27. 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.</p>
<p>28. Tree Protection Measures. Prior to issuance of grading or building related permits, the applicant shall submit documentation of tree protection measures for all specimen trees that have a drip line within the area of construction.</p> <ul style="list-style-type: none">a. Required tree protection measures include: installation of "Tree Protection Area" signage; fencing to protect the tree; placement of mulch or geotextile fabric at the base of the tree; and pruning of branches that could be exposed to damage during constructionb. For trees located on a property line or on neighboring property that have roots or branches that cross property lines, the applicant has a responsibility for reasonable care of the tree and for providing the neighboring property owner adequate notice of the start of construction.c. During construction, the applicant shall be responsible for management of drainage and irrigation systems, avoidance of vehicle movements near tree roots, and avoidance of stockpiling of materials near tree roots.d. In the event of unexpected damage, the applicant shall retain a qualified professional to assess the condition of the tree and implement recommend mitigation measures.
<p>29. Raptor and other Migratory Nesting Birds Survey. Prior to removal of trees on site, pre-construction surveys shall be conducted by a qualified biologist during the months of March through August, no more than 30 thirty days prior to the start of grading or vegetation removal. If active nests are found on the project site, the applicant is required to follow the recommendation of a qualified biologist regarding creation of an adequate buffer zone around the nests.</p>
<p>30. Demolition Permit. Site demolition shall not occur until construction permits are issued for the development project. All demolition shall be in accordance with permits issued by the City and Bay Area Air Quality Management District (BAAQMD).</p>

31. **BAAQMD Control Measures.** To reduce diesel particulate matter and PM10 during construction and minimize short-term health impacts to nearby sensitive receptors are avoided.

Dust (PM10) Control Measures:

- a. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- b. Cover all hauling trucks or maintain at least two feet of freeboard.
- c. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- d. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- e. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- f. Enclose, cover, water twice daily, or apply (non-toxic soil binders to exposed stockpiles.
- g. Limit traffic speeds on any unpaved roads to 15 mph.
- h. Replant vegetation in disturbed areas as quickly as possible.
- i. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Measures to Reduce Diesel Particulate Matter and PM 2.5:

- j. Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site.
- k. Opacity is an indicator of exhaust particulate emissions from off-road diesel-powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- l. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
- m. Properly tune and maintain equipment for low emissions.

<p>32. Construction Sign: The applicant shall install a temporary sign, no more than 10 sq. ft., along the project frontage. The sign should be removed at project completion. Sign information shall include:</p> <ul style="list-style-type: none">a. Contact information (including name, e-mail and phone number) for the contractor or other responsible partyb. Allowed days and hours for constructionc. Project elevation and primary project details (i.e., units and square footage)
<p>33. Pre-Construction Meeting. The applicant and the City shall hold a pre-construction meeting to review the conditions of approval, construction management plan, and other key project requirements.</p>

Encroachment Permit Requirements

<p>34. Encroachment Permit. The applicant shall obtain an encroachment permit from the Engineering Division before commencing any construction activities within any public right-of-way.</p>
<p>35. Collection of Construction Debris. Gather all construction debris on a regular basis and place them in a Waste Management dumpster or other container that is emptied or removed on a weekly basis consistent with the City requirements and State law.</p>
<p>36. Right-of-Way Construction Standards. All improvements within the public right-of-way, including curb, gutter, sidewalks, driveways, paving and utilities, shall be reconstructed in accordance with approved standards and/or plans and shall comply with the standard plans and specification of the Public Works Department Department and Chapter 14 of the City Code.</p>

Prior to Issuance of Occupancy Permit

<p>37. Planning Inspection. Planning staff shall conduct a site visit to review exterior building elevations for architectural consistency with the approved plans and landscape installation (if required). All exterior finishing details including window trim, paint, gutters, downspouts, decking, guardrails, and driveway installation shall be in place prior to scheduling the final inspection.</p>
<p>38. Shielding of Lighting. Prior to the certificate of occupancy, all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.</p>
<p>39. Debris Removal. All mud, dirt or construction debris carried off the construction site and shall be removed prior to scheduling the final Planning inspection. No materials shall be discharged onto a sidewalk, street, gutter, storm drain or creek.</p>
<p>40. Fire Prevention. A final Fire inspection shall occur to inspect all fire prevention systems constructed as part of the project. Inspections shall occur prior to final occupancy permit issuance.</p>
<p>41. Damage to Street Improvements. Any damage to street improvements now existing or done during construction on or adjacent to the subject property, shall be repaired to the satisfaction of the City Engineer at the full expense of the applicant. This shall include sidewalk repair, slurry seal, street reconstruction or others, as may be required by the City Engineer.</p>

City of Albany

ACCEPTANCE OF CONDITIONS

I understand that Planning Application _____ for _____ has been approved with findings and conditions set forth above. I have read the conditions of approval and understand them. Through signing this ACCEPTANCE OF CONDITIONS, I agree and commit to the City of Albany that I will implement and abide by the conditions of approval, including any indemnification requirements imposed by those conditions.

By accepting the permit or approval, applicant agrees to accept responsibility for defending against any third party challenge to the grant of this permit or approval. Except as provided by federal or state law, the applicant shall defend, indemnify and hold the City harmless from any costs, claims, penalties, fines, judgments or liabilities arising from the approval, including without limitation, any award or attorney's fees that might result from the third party challenge. Upon the occurrence of a challenge, or prior to a challenge, the City may require the applicant to execute an indemnity agreement and provide such security as the City may reasonably require.

For this purposes of this indemnity, the term "City" shall include the City of Albany, its officers, officials, employees, agents and representatives. For purposes of this indemnity, the term "challenge" means any legal or administrative action to dispute, contest, attack, set aside, limit, or modify the approval, project conditions, or any act upon which the approval is based, including any action alleging a failure to comply with the California Environmental Quality Act or other laws.

For this permit or approval to become effective, the applicant must, within thirty business days of the grant of the permit or approval, execute a form accepting the permit or approval with all conditions. Upon executing the form, the applicant may not challenge the imposition of any condition, except as otherwise provided by law.

Signature: _____ Date: _____
Applicant

_____ Date: _____
Co-Applicant, if any

1 EXHIBIT C

2 Use Permit Findings and Conditions of Approval

3
4 Findings required for design review approval pursuant to Albany Municipal Code
5 Section 20.100.030.D “Required Findings for Approving Use Permits”
6

7 **Project element subject to use permit:** The proposed use permit is to allow 2,753 sq. ft.
8 of ground floor commercial on the ground level of the proposed building to be used
9 for medical service-related uses, within the limits of discretion available to the City
10 pursuant to California Density Bonus law.
11

12 **1. Necessity, Desirability, Compatibility.** That the size, intensity and location of the
13 proposed use will provide a development that is necessary or desirable for, and
14 compatible with, the neighborhood or the community.
15

16 **Evidence:** Local serving health facilities of this size and scope are an essential element
17 of a full service community-serving commercial district and are an important part of
18 a diverse employment-creating economic base.
19

20 **2. Adverse Impacts.** That such use as proposed will not be detrimental to the health,
21 safety, convenience, or general welfare of persons residing or working in the vicinity,
22 or physically injurious to property, improvements or potential development in the
23 vicinity, with respect to aspects including but not limited to the following:
24

25 a. The nature of the proposed site, including its size and shape, and the proposed
26 size, shape and arrangement of structures;
27

28 b. The accessibility and traffic patterns for persons and vehicles, the type and
29 volume of such traffic, and the adequacy of proposed off-street parking and
30 loading;
31

1 c. The safeguards afforded to prevent noxious or offensive emissions such as
2 noise, glare, dust and odor;

3
4 d. Treatment given, as appropriate, to such aspects as landscaping, screening,
5 open spaces, parking and loading areas, service areas, lighting and signs; and
6

7 **Evidence:** The ground floor medical portion of the project is arranged similar to other
8 dental and medical related uses in the Solano Commercial Zoning District that are
9 beneficial to the community and have been in scale and harmony with surrounding
10 uses. Patient and staff access can be served by nearby pedestrian facilities, bicycle
11 facilities, and public street parking in the Solano commercial district. The dental use is
12 not expected to create excessive noise, or noxious or offensive emissions. Traffic
13 generation and parking demand are similar in scale to other permitted commercial
14 uses of the ground floor space.
15

16 **3. Consistency with Zoning Ordinance, General Plan and Specific Plan.** That such use or
17 feature as proposed will comply with the applicable provisions of Chapter 20 and will
18 be consistent with the policies and standards of the General Plan and any applicable
19 specific plan.
20

21 **Evidence:** General Plan Policy LU-4.3 (Health Care Facilities) encourage the
22 development of small-scale facilities such as what is being proposed that meet local
23 health care and medical needs. In addition, subject to a use permit, ground floor
24 medical office uses are a permitted use in the Zoning Code. There is no applicable
25 specific plan.
26

27 **CONDITIONS OF APPROVAL**

28
29 See Exhibit B-1 for Project Conditions of Approval



City of Albany

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

RESOLUTION NO. 2022-51

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

The 1st day of June, 2022, by the following votes:

AYES: Council Members McQuaid, Nason, Tiedemann and Mayor Jordan

NOES: none

ABSENT: Council Member Gary

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 2nd
day of June, 2022.

Anne Hsu
CITY CLERK